

**PART 982—SECTION 8 TENANT
BASED ASSISTANCE: HOUSING
CHOICE VOUCHER PROGRAM**

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AUTHORITY: 42 U.S.C. 1437f and 3535(d).

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EDITORIAL NOTE: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999.

Subpart A—General Information

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.1 Programs: purpose and structure.

(a) *General description.* (1) In the HUD Housing Choice Voucher Program (Voucher Program) and the HUD certificate program, HUD pays rental subsidies so eligible families can afford decent, safe and sanitary housing. Both programs are generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the programs. PHAs are no longer allowed to enter into contracts for assistance in the certificate program.

(2) Families select and rent units that meet program housing quality

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standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the family. A PHA may not approve a tenancy unless the rents is reasonable.

(3) In the certificate program, the rental subsidy is generally based on the actual rent of a unit leased by the assisted family. In the voucher program, the rental subsidy is determined by a formula.

(4)(i) In the certificate program, the subsidy for most families is the difference between the rent and 30 percent of adjusted monthly income.

(ii) In the voucher program, the subsidy is based on a local "payment standard" that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.

(b) *Tenant-based and project-based assistance.* (1) Section 8 assistance may be "tenant-based" or "project-based". In project-based programs, rental assistance is paid for families who live in specific housing developments or units. With tenant-based assistance, the assisted unit is selected by the family. The family may rent a unit anywhere in the United States in the jurisdiction of a PHA that runs a voucher program.

(2) To receive tenant-based assistance, the family selects a suitable unit. After approving the tenancy, the PHA enters into a contract to make rental subsidy payments to the owner to subsidize occupancy by the family. The PHA contract with the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. The family may move to another unit with continued assistance so long as the family is complying with program requirements.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26640, May 14, 1999]

§ 982.2 Applicability.

(a) Part 982 is a unified statement of program requirements for the tenant-based housing assistance programs under Section 8 of the United States

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Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based programs are the Section 8 tenant-based certificate program and the Section 8 voucher program.

(b) Unless specifically stated in this part, requirements for both tenant-based programs are the same.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26640, May 14, 1999]

§ 982.3 HUD.

The HUD field offices have been delegated responsibility for day-to-day administration of the program by HUD. In exercising these functions, the field offices are subject to HUD regulations and other HUD requirements issued by HUD headquarters. Some functions are specifically reserved to HUD headquarters.

§ 982.4 Definitions.

(a) *Definitions found elsewhere:*

(1) *General definitions.* The terms *1937 Act*, *HUD*, and *MSA*, are defined in 24 CFR part 5, subpart A.

(2) *Definitions under the 1937 Act.* The terms "annual contributions contract (ACC)," "disabled family," "displaced family," "elderly family," "family," "live-in aide," "near-elderly family" and "person with disabilities" are defined in part 5, subpart D of this title.

(3) *Definitions concerning family income and rent.* The terms "adjusted income," "annual income," "extremely low income family," "tenant rent," "total tenant payment," "utility allowance," and "utility reimbursement" are defined in part 5, subpart F of this title. The definitions of "tenant rent" and "utility reimbursement" in part 5, subpart F of this title, apply to the certificate program, but do not apply to the tenant-based voucher program under part 982.

(b) In addition to the terms listed in paragraph (a) of this section, the following definitions apply:

Absorption. In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PPHA uses funds available under the receiving PHA consolidated ACC.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See § 982.152.

Administrative fee reserve (formerly "operating reserve"). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See § 982.155.

Administrative plan. The plan that describes PHA policies for administration of the tenant-based programs. See § 982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

Applicant (applicant family). A family that has applied for admission to a program but is not yet a participant in the program.

Budget authority. An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

Common space. In shared housing: Space available for use by the assisted family and other occupants of the unit.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see § 982.606 to § 982.609.

Continuously assisted. An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Act program when the family is admitted to the certificate or voucher program.

Cooperative (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type: see § 982.619.

Domicile. The legal residence of the household head or spouse as determined in accordance with State and local law.

Drug-related criminal activity. As defined in 42 U.S.C. 1437f(f)(5).

Drug-trafficking. The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Fair market rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the FEDERAL REGISTER in accordance with 24 CFR part 888.

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see § 982.515(b).

Family self-sufficiency program (FSS program). The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see § 982.515(a).

Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see § 982.610 to § 982.614.

HAP contract. Housing assistance payments contract.

Housing assistance payment. The monthly assistance payment by a PHA, which includes:

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(1) A payment to the owner for rent to the owner under the family's lease; and

(2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the tenant-based programs. See § 982.401.

Initial PHA. In portability, the term refers to both:

(1) a PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and

(2) a PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Jurisdiction. The area in which the PHA has authority under State and local law to administer the program.

Lease. (1) A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

(2) In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's cooperative dwelling unit by the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and the PHA. For purposes of this part 982, the cooperative is the Section 8 "owner" of the unit, and the cooperative member is the Section 8 "tenant."

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see § 982.620 and § 982.621.

Manufactured home space. In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by

the family is located on the space. See § 982.622 to § 982.624.

Merger date. October 1, 1999.

Mutual housing. Included in the definition of "cooperative."

Notice of Funding Availability (NOFA). For budget authority that HUD distributes by competitive process, the FEDERAL REGISTER document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

Participant (participant family). A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

PHA plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD in accordance with part 903 of this chapter.

Portability. Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Private space. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

Program. The Section 8 tenant-based assistance program under this part.

Program receipts. HUD payments to the PHA under the consolidated ACC, and any other amounts received by the PHA in connection with the program.

Public housing agency (PHA). PHA includes both:

(1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), and

(2) Any of the following:

(i) A consortium of housing agencies, each of which meets the qualifications

in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortium members);

(ii) Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) on October 21, 1998; or

(iii) For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

Reasonable rent. A rent to owner that is not more than rent charged:

(1) For comparable units in the private unassisted market; and

(2) For comparable unassisted units in the premises.

Receiving PHA. In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

Renewal units. The number of units, as determined by HUD, for which funding is reserved on HUD books for a PHA's program. This number is used in calculating renewal budget authority in accordance with § 982.102.

Rent to owner. The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

Residency preference. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see § 982.615 to § 982.618.

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see § 982.602 to § 982.605.

Special admission. Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

Special housing types. See subpart M of this part 982. Subpart M of this part states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

Subsidy standards. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. Stopping the clock on the term of a family's voucher, for such period as determined by the PHA, from the time when the family submits a request for PHA approval of the tenancy, until the time when the PHA approves or denies the request.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant rent. For a tenancy in the certificate program: The total tenant payment minus any utility allowance.

Utility reimbursement. In the voucher program, the portion of the housing assistance payment which exceeds the amount of the rent to owner. (See § 982.514(b)). (For the certificate program, "utility reimbursement" is defined in part 5, subpart F of this title.)

Violent criminal activity. Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

Voucher holder. A family holding a voucher with an unexpired term (search time).

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Voucher (rental voucher). A document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

Waiting list admission. An admission from the PHA waiting list.

Welfare-to-work (WTW) families. Families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

[63 FR 23857, Apr. 30, 1998; 63 FR 31625, June 10, 1998; 64 FR 26641, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 56887, 56911, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000]

§ 982.5 Notices required by this part.

Where part 982 requires any notice to be given by the PHA, the family or the owner, the notice must be in writing.

Subpart B—HUD Requirements and PHA Plan for Administration of Program

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.51 PHA authority to administer program.

(a) The PHA must have authority to administer the program. The PHA must provide evidence, satisfactory to HUD, of its status as a PHA, of its authority to administer the program, and of the PHA jurisdiction.

(b) The evidence submitted by the PHA to HUD must include enabling legislation and a supporting legal opinion satisfactory to HUD. The PHA must submit additional evidence when there is a change that affects its status as a PHA, authority to administer the program, or the PHA jurisdiction.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26641, May 14, 1999]

§ 982.52 HUD requirements.

(a) The PHA must comply with HUD regulations and other HUD requirements for the program. HUD requirements are issued by HUD headquarters, as regulations, FEDERAL REGISTER no-

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tices or other binding program directives.

(b) The PHA must comply with the consolidated ACC and the PHA's HUD-approved applications for program funding.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

§ 982.53 Equal opportunity requirements.

(a) The tenant-based program requires compliance with all equal opportunity requirements imposed by contract or federal law, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*

(b) *Civil rights certification.* The PHA must submit a signed certification to HUD that:

(1) The PHA will administer the program in conformity with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act.

(2) The PHA will affirmatively further fair housing in the administration of the program.

(c) *Obligation to affirmatively further fair housing.* The PHA shall affirmatively further fair housing as required by § 903.7(o) of this title.

(d) *State and local law.* Nothing in part 982 is intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder. However, such State and local laws shall not change or affect any requirement of this part, or any other HUD requirements for administration or operation of the program.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23859, Apr. 30, 1998; 64 FR 26641, May 14, 1999; 64 FR 56911, Oct. 21, 1999]

§ 982.54 Administrative plan.

(a) The PHA must adopt a written administrative plan that establishes local policies for administration of the

program in accordance with HUD requirements. The administrative plan and any revisions of the plan must be formally adopted by the PHA Board of Commissioners or other authorized PHA officials. The administrative plan states PHA policy on matters for which the PHA has discretion to establish local policies.

(b) The administrative plan must be in accordance with HUD regulations and requirements. The administrative plan is a supporting document to the PHA plan (part 903 of this title) and must be available for public review. The PHA must revise the administrative plan if needed to comply with HUD requirements.

(c) The PHA must administer the program in accordance with the PHA administrative plan.

(d) The PHA administrative plan must cover PHA policies on these subjects:

(1) Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list;

(2) Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions or suspensions of the voucher term. "Suspension" means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension;

(3) Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families;

(4) Occupancy policies, including:

(i) Definition of what group of persons may qualify as a "family";

(ii) Definition of when a family is considered to be "continuously assisted";

(5) Encouraging participation by owners of suitable units located outside areas of low income or minority concentration;

(6) Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit;

(7) Providing information about a family to prospective owners;

(8) Disapproval of owners;

(9) Subsidy standards;

(10) Family absence from the dwelling unit;

(11) How to determine who remains in the program if a family breaks up;

(12) Informal review procedures for applicants;

(13) Informal hearing procedures for participants;

(14) The process for establishing and revising voucher payment standards;

(15) The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract);

(16) Special policies concerning special housing types in the program (e.g., use of shared housing);

(17) Policies concerning payment by a family to the PHA of amounts the family owes the PHA;

(18) Interim redeterminations of family income and composition;

(19) Restrictions, if any, on the number of moves by a participant family (see § 982.314(c)); and

(20) Restrictions, if any, on the number of moves by a participant family (see § 982.314(c));

(21) Approval by the Board of Commissioners or other authorized officials to charge the administrative fee reserve;

(22) Procedural guidelines and performance standards for conducting required HQS inspections; and

(23) PHA screening of applicants for family behavior or suitability for tenancy.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996; 63 FR 23859, Apr. 30, 1998; 64 FR 26641, May 14, 1999; 64 FR 49658, 64 FR Sept. 14, 1999; 56911, Oct. 21, 1999]

Subpart C—Funding and PHA Application for Funding

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.101 Allocation of funding.

(a) *Allocation of funding.* HUD allocates available budget authority for the tenant-based assistance program to HUD field offices.

(b) *Section 213(d) allocation.* (1) Section 213(d) of the HCD Act of 1974 (42 U.S.C. 1439) establishes requirements for allocation of assisted housing budget authority. Some budget authority is exempt by law from allocation under section 213(d). Unless exempted by law, budget authority for the tenant-based programs must be allocated in accordance with section 213(d).

(2) Budget authority subject to allocation under section 213(d) is allocated in accordance with 24 CFR part 791, subpart D. There are three categories of section 213(d) funding allocations under part 791 of this title:

(i) Funding retained in a headquarters reserve for purposes specified by law;

(ii) funding incapable of geographic formula allocation (e.g., for renewal of expiring funding increments); or

(iii) funding allocated by an objective fair share formula. Funding allocated by fair share formula is distributed by a competitive process.

(c) *Competitive process.* For budget authority that is distributed by competitive process, the Department solicits applications from PHAs by publishing one or more notices of funding availability (NOFA) in the FEDERAL REGISTER. See 24 CFR part 12, subpart B; and 24 CFR 791.406. The NOFA explains how to apply for assistance, and specifies the criteria for awarding the assistance. The NOFA may identify any special program requirements for use of the funding.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26642, May 14, 1999]

§ 982.102 Allocation of budget authority for renewal of expiring consolidated ACC funding increments.

(a) *Applicability.* This section applies to the renewal of consolidated ACC

funding increments in the program (as described in § 982.151(a)(2)) that expire after December 31, 1999 (including any assistance that the PHA has attached to units for project-based assistance under part 983 of this title). This section implements section 8(dd) of the 1937 Act (42 U.S.C. 1437f(dd)).

(b) *Renewal Methodology.* HUD will use the following methodology to determine the amount of budget authority to be allocated to a PHA for the renewal of expiring consolidated ACC funding increments in the program, subject to the availability of appropriated funds. If the amount of appropriated funds is not sufficient to provide the full amount of renewal funding for PHAs, as calculated in accordance with this section, HUD may establish a procedure to adjust allocations for the shortfall in funding.

(c) *Determining the amount of budget authority allocated for renewal of an expiring funding increment.* Subject to availability of appropriated funds, as determined by HUD, the amount of budget authority allocated by HUD to a PHA for renewal of each program funding increment that expires during a calendar year will be equal to:

(1) *Number of renewal units.* The number of renewal units assigned to the funding increment (as determined by HUD pursuant to paragraph (d) of this section); multiplied by

(2) *Adjusted annual per unit cost.* The adjusted annual per unit cost (as determined by HUD pursuant to paragraph (e) of this section).

(d) *Determining the number of renewal units.*—(1) *Number of renewal units.* HUD will determine the total number of renewal units for a PHA's program as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated. The number of renewal units for a PHA's program will be determined as follows:

(i) *Step 1: Establishing the initial baseline.* HUD will establish a baseline number of units ("baseline") for each PHA program. The initial baseline equals the number of units reserved by HUD for the PHA program as of December 31, 1999.

(ii) *Step 2: Establishing the adjusted baseline.* The adjusted baseline equals the initial baseline with the following

adjustments from the initial baseline as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated:

(A) *Additional units.* HUD will add to the initial baseline any additional units reserved for the PHA after December 31, 1999.

(B) *Units removed.* HUD will subtract from the initial baseline any units de-reserved by HUD from the PHA program after December 31, 1999.

(iii) *Step 3: Determining the number of renewal units.* The number of renewal units equals the adjusted baseline minus the number of units supported by contract funding increments that expire after the end of the calendar year.

(2) *Funding increments.* HUD will assign all units reserved for a PHA program to one or more funding increment(s).

(3) *Correction of errors.* HUD may adjust the number of renewal units to correct errors.

(e) *Determining the adjusted per unit cost.* HUD will determine the PHA's adjusted per unit cost when HUD processes the allocation of renewal funding for an expiring contract funding increment. The adjusted per unit cost calculated will be determined as follows:

(1) *Step 1: Determining monthly program expenditure.*—(i) *Use of most recent HUD-approved year end statement.* HUD will determine the PHA's monthly per unit program expenditure for the PHA certificate and voucher programs (including project-based assistance under such programs) under the consolidated ACC with HUD using data from the PHA's most recent HUD-approved year end statement.

(ii) *Monthly program expenditure.* The monthly program expenditure equals:

(A) *Total program expenditure.* The PHA's total program expenditure (the total of housing assistance payments and administrative costs) for the PHA fiscal year covered by the approved year end statement; divided by

(B) *Total unit months leased.* The total of unit months leased for the PHA fiscal year covered by the approved year end statement.

(2) *Step 2: Determining annual per unit cost.* HUD will determine the PHA's annual per unit cost. The annual per unit

cost equals the monthly program expenditures (as determined under paragraph (e)(1)(ii) of this section) multiplied by 12.

(3) *Step 3: Determining adjusted annual per unit cost.* (i) HUD will determine the PHA's adjusted annual per unit cost. The adjusted annual per unit cost equals the annual per unit cost (as determined under paragraph (e)(2) of this section) multiplied cumulatively by the applicable published Section 8 housing assistance payments program annual adjustment factors in effect during the period from the end of the PHA fiscal year covered by the approved year end statement to the time when HUD processes the allocation of renewal funding.

(ii) *Use of annual adjustment factor applicable to PHA jurisdiction.* For this purpose, HUD will use the annual adjustment factor from the notice published annually in the FEDERAL REGISTER pursuant to part 888 that is applicable to the jurisdiction of the PHA. For a PHA whose jurisdiction spans multiple annual adjustment factor areas, HUD will use the highest applicable annual adjustment factor.

(iii) *Use of annual adjustment factors in effect subsequent to most recent Year End Statement.* HUD will use the Annual Adjustment Factors in effect during the time period subsequent to the time covered by the most recent HUD approved Year End Statement and the time of the processing of the contract funding increment to be renewed.

(iii) *Special circumstances.* At its discretion, HUD may modify the adjusted annual per unit cost based on receipt of a modification request from a PHA. The modification request must demonstrate that because of special circumstances application of the annual adjustment factor will not provide an accurate adjusted annual per unit cost.

(4) *Correction of errors.* HUD may correct for errors in the adjusted per unit cost.

(f) *consolidated ACC amendment to add renewal funding.* HUD will reserve allocated renewal funding available to the PHA within a reasonable time prior to the expiration of the funding increment to be renewed and establish a new expiration date one-year from the date of such expiration.

(g) *Modification of allocation of budget authority*—(1) *HUD authority to conform PHA program costs with PHA program finances through FEDERAL REGISTER notice.* In the event that a PHA's costs incurred threaten to exceed budget authority and allowable reserves, HUD reserves the right, through FEDERAL REGISTER notice, to bring PHA program costs and the number of families served, in line with PHA program finances.

(2) *HUD authority to limit increases of per unit cost through FEDERAL REGISTER notice.* HUD may, by FEDERAL REGISTER notice, limit the amount or percentage of increases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(3) *HUD authority to limit decreases to per unit costs through FEDERAL REGISTER notice.* HUD may, by FEDERAL REGISTER notice, limit the amount or percentage of decreases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(4) *Contents of FEDERAL REGISTER notice.* If HUD publishes a FEDERAL REGISTER notice pursuant to paragraphs (g)(1), (g)(2) or (g)(3) of this section, it will describe the rationale, circumstances and procedures under which such modifications are implemented. Such circumstances and procedures shall, be consistent with the objective of enabling PHAs and HUD to meet program goals and requirements including but not limited to:

- (i) Deconcentration of poverty and expanding housing opportunities;
- (ii) Reasonable rent burden;
- (iii) Income targeting;
- (iv) Consistency with applicable consolidated plan(s);
- (v) Rent reasonableness;
- (vi) Program efficiency and economy;
- (vii) Service to additional households within budgetary limitations; and
- (viii) Service to the adjusted baseline number of families.

(5) *Public consultation before issuance of FEDERAL REGISTER notice.* HUD will design and undertake informal public consultation prior to issuing FEDERAL REGISTER notices pursuant to paragraphs (g)(1) or (g)(2) of this section.

(h) *Ability to prorate and synchronize contract funding increments.* Notwith-

standing paragraphs (c) through (g) of this section, HUD may prorate the amount of budget authority allocated for the renewal of funding increments that expire on different dates throughout the calendar year. HUD may use such proration to synchronize the expiration dates of funding increments under the PHA's consolidated ACC.

(i) *Reallocation of budget authority.* If a PHA has performance deficiencies, such as a failure to adequately lease units, HUD may reallocate some of its budget authority to other PHAs. If HUD determines to reallocate budget authority, it will reduce the number of units reserved by HUD for the PHA program of the PHA whose budget authority is being reallocated and increase the number of units reserved by HUD for the PHAs whose programs are receiving the benefit of the reallocation, so that such PHAs can issue vouchers. HUD will publish a notice in the FEDERAL REGISTER that will describe the circumstances and procedures for reallocating budget authority pursuant to this paragraph.

[64 FR 56887, Oct. 21, 1999; 65 FR 16818, Mar. 30, 2000]

§ 982.103 PHA application for funding.

(a) a PHA must submit an application for program funding to HUD at the time and place and in the form required by HUD.

(b) For competitive funding under a NOFA, the application must be submitted by a PHA in accordance with the requirements of the NOFA.

(c) The application must include all information required by HUD. HUD requirements may be stated in the HUD-required form of application, the NOFA, or other HUD instructions.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23859, Apr. 30, 1998. Redesignated at 64 FR 56887, Oct. 21, 1999]

§ 982.104 HUD review of application.

(a) *Competitive funding under NOFA.* For competitive funding under a NOFA, HUD must evaluate an application on the basis of the selection criteria stated in the NOFA, and must

consider the PHA's capacity and capability to administer the program.

(b) *Approval or disapproval of PHA funding application.* (1) HUD must notify the PHA of its approval or disapproval of the PHA funding application.

(2) When HUD approves an application, HUD must notify the PHA of the amount of approved funding.

(3) For budget authority that is distributed to PHAs by competitive process, documentation of the basis for provision or denial of assistance is available for public inspection in accordance with 24 CFR 12.14(b).

(c) *PHA disqualification.* HUD will not approve any PHA funding application (including an application for competitive funding under a NOFA) if HUD determines that the PHA is disbarred or otherwise disqualified from providing assistance under the program.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26642, May 14, 1999. Redesignated at 64 FR 56887, Oct. 21, 1999]

Subpart D—Annual Contributions Contract and PHA Administration of Program

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.151 Annual contributions contract.

(a) *Nature of ACC.* (1) An annual contributions contract (ACC) is a written contract between HUD and a PHA. Under the ACC, HUD agrees to make payments to the PHA, over a specified term, for housing assistance payments to owners and for the PHA administrative fee. The ACC specifies the maximum payment over the ACC term. The PHA agrees to administer the program in accordance with HUD regulations and requirements.

(2) HUD's commitment to make payments for each funding increment in the PHA program constitutes a separate ACC. However, commitments for all the funding increments in a PHA program are listed in one consolidated contractual document called the consolidated annual contributions contract (consolidated ACC). A single con-

solidated ACC covers funding for the PHA tenant-based assistance program.

(b) *Budget authority.* (1) Budget authority is the maximum amount that may be paid by HUD to a PHA over the ACC term of a funding increment. Before adding a funding increment to the consolidated ACC for a PHA program, HUD reserves budget authority from amounts authorized and appropriated by the Congress for the program.

(2) For each funding increment, the ACC specifies the term over which HUD will make payments for the PHA program, and the amount of available budget authority for each funding increment. The amount to be paid to the PHA during each PHA fiscal year (including payment from the ACC reserve account described in § 982.154) must be approved by HUD.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 26642, May 14, 1999]

§ 982.152 Administrative fee.

(a) *Purposes of administrative fee.* (1) HUD may approve administrative fees to the PHA for any of the following purposes:

- (i) Ongoing administrative fee;
- (ii) Costs to help families who experience difficulty finding or renting appropriate housing under the program;
- (iii) The following types of extraordinary costs approved by HUD:

(A) Costs to cover necessary additional expenses incurred by the PHA to provide reasonable accommodation for persons with disabilities in accordance with part 8 of this title (e.g., additional counselling costs), where the PHA is unable to cover such additional expenses from ongoing administrative fee income or the PHA administrative fee reserve;

(B) Costs of audit by an independent public accountant;

(C) Other extraordinary costs determined necessary by HUD Headquarters;

(iv) Preliminary fee (in accordance with paragraph (c) of this section);

(v) Costs to coordinate supportive services for families participating in the family self-sufficiency (FSS) program.

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(2) For each HA fiscal year, administrative fees are specified in the HA budget. The budget is submitted for HUD approval. Fees are paid in the amounts approved by HUD. Administrative fees may only be approved or paid from amounts appropriated by the Congress.

(3) HA administrative fees may only be used to cover costs incurred to perform HA administrative responsibilities for the program in accordance with HUD regulations and requirements.

(b) *Ongoing administrative fee.* (1) The PHA ongoing administrative fee is paid for each program unit under HAP contract on the first day of the month. The amount of the ongoing fee is determined by HUD in accordance with Section 8(q)(1) of the 1937 Act (42 U.S.C. 1437f(q)(1)).

(2) If appropriations are available, HUD may pay a higher ongoing administrative fee for a small program or a program operating over a large geographic area. This higher fee level will not be approved unless the PHA demonstrates that it is efficiently administering its tenant-based program, and that the higher ongoing administrative fee is reasonable and necessary for administration of the program in accordance with HUD requirements.

(3) HUD may pay a lower ongoing administrative fee for PHA-owned units.

(c) *Preliminary fee.* (1) If the PHA was not administering a program of Section 8 tenant-based assistance prior to the merger date, HUD will pay a one-time fee in the amount of \$500 in the first year the PHA administers a program. The fee is paid for each new unit added to the PHA program by the initial funding increment under the consolidated ACC.

(2) The preliminary fee is used to cover expenses the PHA incurs to help families who inquire about or apply for the program, and to lease up new program units.

(d) *Reducing PHA administrative fee.* HUD may reduce or offset any administrative fee to the PHA, in the amount determined by HUD, if the PHA fails to perform PHA administrative responsibilities correctly or adequately under the program (for example, PHA failure to enforce HQS requirements; or to re-

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imburse a receiving PHA promptly under portability procedures).

[60 FR 23695, July 3, 1995, as amended at 63 FR 23860, Apr. 30, 1998; 64 FR 26642, May 14, 1999]

§ 982.153 PHA responsibilities.

The PHA must comply with the consolidated ACC, the application, HUD regulations and other requirements, and the PHA administrative plan.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996; 63 FR 23860, Apr. 30, 1998]

§ 982.154 ACC reserve account.

(a) HUD may establish and maintain an unfunded reserve account for the PHA program from available budget authority under the consolidated ACC. This reserve is called the "ACC reserve account" (formerly "project reserve"). There is a single ACC reserve account for the PHA program.

(b) The amount in the ACC reserve account is determined by HUD. HUD may approve payments for the PHA program, in accordance with the PHA's HUD-approved budget, from available amounts in the ACC reserve account.

[64 FR 26642, May 14, 1999]

§ 982.155 Administrative fee reserve.

(a) The PHA must maintain an administrative fee reserve (formerly "operating reserve") for the program. There is a single administrative fee reserve for the PHA program. The PHA must credit to the administrative fee reserve the total of:

(1) The amount by which program administrative fees paid by HUD for a PHA fiscal year exceed the PHA program administrative expenses for the fiscal year; plus

(2) Interest earned on the administrative fee reserve.

(b)(1) The PHA must use funds in the administrative fee reserve to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses (to the end of the last expiring funding increment under the consolidated

ACC), the PHA may use these funds for other housing purposes permitted by State and local law. However, HUD may prohibit use of the funds for certain purposes.

(2) The PHA Board of Commissioners or other authorized officials must establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

(3) If the PHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the PHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 26642, May 14, 1999]

§ 982.156 Depositary for program funds.

(a) Unless otherwise required or permitted by HUD, all program receipts must be promptly deposited with a financial institution selected as depositary by the PHA in accordance with HUD requirements.

(b) The PHA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements.

(c) The PHA must enter into an agreement with the depositary in the form required by HUD.

(d)(1) If required under a written freeze notice from HUD to the depositary:

(i) The depositary may not permit any withdrawal by the PHA of funds held under the depositary agreement unless expressly authorized by written notice from HUD to the depositary; and

(ii) The depositary must permit withdrawals of such funds by HUD.

(2) HUD must send the PHA a copy of the freeze notice from HUD to the depositary.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

§ 982.157 Budget and expenditure.

(a) *Budget submission.* Each PHA fiscal year, the PHA must submit its proposed budget for the program to HUD for approval at such time and in such form as required by HUD.

(b) *PHA use of program receipts.* (1) Program receipts must be used in accordance with the PHA's HUD-approved budget. Such program receipts may only be used for:

- (i) Housing assistance payments; and
- (ii) PHA administrative fees.

(2) The PHA must maintain a system to ensure that the PHA will be able to make housing assistance payments for all participants within the amounts contracted under the consolidated ACC.

(c) *Intellectual property rights.* Program receipts may not be used to indemnify contractors or subcontractors of the PHA against costs associated with any judgment of infringement of intellectual property rights.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 26642, May 14, 1999]

§ 982.158 Program accounts and records.

(a) The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. The records must be in the form required by HUD, including requirements governing computerized or electronic forms of record-keeping. The PHA must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

(b) The PHA must furnish to HUD accounts and other records, reports, documents and information, as required by HUD. For provisions on electronic transmission of required family data, see 24 CFR part 908.

(c) HUD and the Comptroller General of the United States shall have full and free access to all PHA offices and facilities, and to all accounts and other records of the PHA tPHAt are pertinent to administration of the program, including the right to examine or audit

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the records, and to make copies. The PHA must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and shall provide any information or assistance needed to access the records.

(d) The PHA must prepare a unit inspection report.

(e) During the term of each assisted lease, and for at least three years thereafter, the PHA must keep:

- (1) A copy of the executed lease;
- (2) The HAP contract; and
- (3) The application from the family.

(f) The PHA must keep the following records for at least three years:

(1) Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;

(2) An application from each ineligible family and notice that the applicant is not eligible;

(3) HUD-required reports;

(4) Unit inspection reports;

(5) Lead-based paint records as required by part 35, subpart B of this title.

(6) Accounts and other records supporting PHA budget and financial statements for the program;

(7) Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and

(8) Other records specified by HUD.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996; 63 FR 23860, Apr. 30, 1998; 63 FR 46593, Sept. 1, 1998; 64 FR 50229, Sept. 15, 1999]

EFFECTIVE DATE NOTE: At 64 FR 50229, Sept. 15, 1999, § 982.158 was amended by revising paragraph (f)(5), effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 982.158 Program accounts and records.

* * * * *

(f) * * *

(5) Lead-based paint inspection records (as required by § 982.401(j));

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§ 982.159 Audit requirements.

(a) The PHA must engage and pay an independent public accountant to conduct audits in accordance with HUD requirements.

(b) The PHA is subject to the audit requirements in 24 CFR part 44.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

§ 982.160 HUD determination to administer a local program.

If the Assistant Secretary for Public and Indian Housing determines that there is no PHA organized, or that there is no PHA able and willing to implement the provisions of this part for an area, HUD (or an entity acting on behalf of HUD) may enter into HAP contracts with owners and perform the functions otherwise assigned to PHAs under this part with respect to the area.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

§ 982.161 Conflict of interest.

(a) Neither the PHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the tenant-based programs in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

(1) Any present or former member or officer of the PHA (except a participant commissioner);

(2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs;

(3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or

(4) Any member of the Congress of the United States.

(b) Any member of the classes described in paragraph (a) of this section must disclose their interest or prospective interest to the PHA and HUD.

(c) The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

§ 982.162 Use of HUD-required contracts and other forms.

(a) The PHA must use program contracts and other forms required by HUD headquarters, including:

(1) The consolidated ACC between HUD and the PHA;

(2) The HAP contract between the PHA and the owner; and

(3) The tenancy addendum required by HUD (which is included both in the HAP contract and in the lease between the owner and the tenant).

(b) Required program contracts and other forms must be word-for-word in the form required by HUD headquarters. Any additions to or modifications of required program contracts or other forms must be approved by HUD headquarters.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26642, May 14, 1999]

§ 982.163 Fraud recoveries.

Under 24 CFR part 792, the PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner by litigation, court-order or a repayment agreement.

[60 FR 34695, July 3, 1995; 60 FR 43840, Aug. 23, 1995]

Subpart E—Admission to Tenant-Based Program

§ 982.201 Eligibility and targeting.

(a) *When applicant is eligible: general.* The PHA may only admit an eligible family to the program. To be eligible, the applicant must be a "family", must be income-eligible, and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5.

(b) *Income.* (1) *Income-eligibility.* To be income-eligible, the applicant must be a family in any of the following categories:

(i) A "very low income" family;

(ii) A low-income family that is "continuously assisted" under the 1937 Housing Act;

(iii) A low-income family that meets additional eligibility criteria specified

in the PHA administrative plan. Such additional PHA criteria must be consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction;

(iv) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a HOPE 1 (HOPE for public housing homeownership) or HOPE 2 (HOPE for homeownership of multifamily units) project. (Section 8(o)(4)(D) of the 1937 Act (42 U.S.C. 1437f(o)(4)(D));

(v) A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing as defined in § 248.101 of this title;

(vi) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident homeownership program under § 248.173 of this title.

(2) *Income-targeting.* (i) Not less than 75 percent of the families admitted to a PHA's tenant-based voucher program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. Annual income of such families shall be verified within the period described in paragraph (e) of this section.

(ii) A PHA may admit a lower percent of extremely low income families during a PHA fiscal year (than otherwise required under paragraph (b)(2)(i) of this section) if HUD approves the use of such lower percent by the PHA, in accordance with the PHA plan, based on HUD's determination that the following circumstances necessitate use of such lower percent by the PHA:

(A) The PHA has opened its waiting list for a reasonable time for admission of extremely low income families residing in the same metropolitan statistical area (MSA) or non-metropolitan county, both inside and outside the PHA jurisdiction;

(B) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to such families, including outreach and marketing to extremely low income families on the Section 8 and public housing waiting lists of other PHAs with jurisdiction in the same MSA or non-metropolitan county;

(C) Notwithstanding such actions by the PHA (in accordance with paragraphs (b)(2)(ii)(A) and (B) of this section), there are not enough extremely low income families on the PHA's waiting list to fill available slots in the program during any fiscal year for which use of a lower percent is approved by HUD; and

(D) Admission of the additional very low income families other than extremely low income families to the PHA's tenant-based voucher program will substantially address worst case housing needs as determined by HUD.

(iii) If approved by HUD, the admission of a portion of very low income welfare-to-work (WTW) families that are not extremely low income families may be disregarded in determining compliance with the PHA's income-targeting obligations under paragraph (b)(2)(i) of this section. HUD will grant such approval only if and to the extent that the PHA has demonstrated to HUD's satisfaction that compliance with such targeting obligations with respect to such portion of WTW families would interfere with the objectives of the welfare-to-work voucher program. If HUD grants such approval, admission of that portion of WTW families is not counted in the base number of families admitted to a PHA's tenant-based voucher program during the fiscal year for purposes of income targeting.

(iv) Conversion of assistance for a participant in the PHA certificate program to assistance in the PHA voucher program does not count as an "admission," and is not subject to targeting under paragraph (b)(2)(i) of this section.

(v) Admission of families as described in paragraphs (b)(1)(ii) or (b)(1)(v) of this section is not subject to targeting under paragraph (b)(2)(i) of this section.

(vi) If the jurisdictions of two or more PHAs that administer the tenant-based voucher program cover an identical geographic area, such PHAs may elect to be treated as a single PHA for purposes of targeting under paragraph (b)(2)(i) of this section. In such a case, the PHAs shall cooperate to assure that aggregate admissions by such PHAs comply with the targeting re-

quirement. If such PHAs do not have a single fiscal year, HUD will determine which PHA's fiscal year is used for this purpose.

(vii) If a family initially leases a unit outside the PHA jurisdiction under portability procedures at admission to the voucher program on or after the merger date, such admission shall be counted against the targeting obligation of the initial PHA (unless the receiving PHA absorbs the portable family into the receiving PHA voucher program from the point of admission).

(3) The annual income (gross income) of an applicant family is used both for determination of income-eligibility under paragraph (b)(1) of this section, and for targeting under paragraph (b)(2)(i) of this section.

(4) The applicable income limit for issuance of a voucher when a family is selected for the program is the highest income limit (for the family size) for areas in the PHA jurisdiction. The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted in the program. At admission, the family may only use the voucher to rent a unit in an area where the family is income eligible.

(c) *Family composition.* (1) A "family" may be a single person or a group of persons.

(2) A "family" includes a family with a child or children.

(3) A group of persons consisting of two or more elderly persons or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides is a family. The PHA determines if any other group of persons qualifies as a "family".

(4) A single person family may be:

(i) An elderly person.

(ii) A displaced person.

(iii) A disabled person.

(iv) Any other single person.

(5) A child who is temporarily away from the home because of placement in foster care is considered a member of the family.

(d) *Continuously assisted.* (1) An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the

family is admitted to the voucher program.

(2) The PHA must establish policies concerning whether and to what extent a brief interruption between assistance under one of these programs and admission to the voucher program will be considered to break continuity of assistance under the 1937 Housing Act.

(e) *When PHA verifies that applicant is eligible.* The PHA must receive information verifying that an applicant is eligible within the period of 60 days before the PHA issues a voucher to the applicant.

(f) *Decision to deny assistance—(1) Notice to applicant.* The PHA must give an applicant prompt written notice of a decision denying admission to the program (including a decision that the applicant is not eligible, or denying assistance for other reasons). The notice must give a brief statement of the reasons for the decision. The notice must also state that the applicant may request an informal review of the decision, and state how to arrange for the informal review.

(2) For description of the grounds for denying assistance because of action or inaction by the applicant, see § 982.552(b) and (c) (requirement and authority to deny admission) and § 982.553(a) (crime by family members).

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 61 FR 13627, Mar. 27, 1996; 64 FR 26642, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 56911, Oct. 21, 1999]

§ 982.202 How applicants are selected: General requirements.

(a) *Waiting list admissions and special admissions.* The PHA may admit an applicant for participation in the program either:

(1) As a special admission (see § 982.203).

(2) As a waiting list admission (see § 982.204 through § 982.210).

(b) *Prohibited admission criteria—(1) Where family lives.* Admission to the program may not be based on where the family lives before admission to the program. However, the PHA may target assistance for families who live in public housing or other federally assisted housing, or may adopt a residency preference (see § 982.207).

(2) *Where family will live.* Admission to the program may not be based on where the family will live with assistance under the program.

(3) *Family characteristics.* The PHA preference system may provide a preference for admission of families with certain characteristics from the PHA waiting list. However, admission to the program may not be based on:

(i) Discrimination because members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;

(ii) Discrimination because a family includes children (familial status discrimination);

(iii) Discrimination because of age, race, color, religion, sex, or national origin;

(iv) Discrimination because of disability; or

(v) Whether a family decides to participate in a family self-sufficiency program.

(c) *Applicant status.* An applicant does not have any right or entitlement to be listed on the PHA waiting list, to any particular position on the waiting list, or to admission to the programs. The preceding sentence does not affect or prejudice any right, independent of this rule, to bring a judicial action challenging an PHA violation of a constitutional or statutory requirement.

(d) *Admission policy.* The PHA must admit applicants for participation in accordance with HUD regulations and other requirements, and with PHA policies stated in the PHA administrative plan and the PHA plan. The PHA admission policy must state the system of admission preferences that the PHA uses to select applicants from the waiting list, including any residency preference or other local preference.

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 61 FR 9048, Mar. 6, 1996; 61 FR 27163, May 30, 1996; 64 FR 26643, May 14, 1999; 65 FR 16821, Mar. 30, 2000]

§ 982.203 Special admission (non-waiting list): Assistance targeted by HUD.

(a) If HUD awards a PHA program funding that is targeted for families living in specified units:

(1) The PHA must use the assistance for the families living in these units.

(2) The PHA may admit a family that is not on the PHA waiting list, or without considering the family's waiting list position. The PHA must maintain records showing that the family was admitted with HUD-targeted assistance.

(b) The following are examples of types of program funding that may be targeted for a family living in a specified unit:

(1) A family displaced because of demolition or disposition of a public housing project;

(2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;

(3) For housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990 (41 U.S.C. 4101 et seq.):

(i) A non-purchasing family residing in a project subject to a homeownership program (under 24 CFR 248.173); or

(ii) A family displaced because of mortgage prepayment or voluntary termination of a mortgage insurance contract (as provided in 24 CFR 248.165);

(4) A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term; and

(5) A non-purchasing family residing in a HOPE 1 or HOPE 2 project.

[59 FR 36682, July 18, 1994, as amended at 64 FR 26643, May 14, 1999]

§ 982.204 Waiting list: Administration of waiting list.

(a) *Admission from waiting list.* Except for special admissions, participants must be selected from the PHA waiting list. The PHA must select participants from the waiting list in accordance with admission policies in the PHA administrative plan.

(b) *Organization of waiting list.* The PHA must maintain information that permits the PHA to select participants from the waiting list in accordance with the PHA admission policies. The waiting list must contain the following information for each applicant listed:

(1) Applicant name;

(2) Family unit size (number of bedrooms for which family qualifies under PHA occupancy standards);

(3) Date and time of application;

(4) Qualification for any local preference;

(5) Racial or ethnic designation of the head of household.

(c) *Removing applicant names from the waiting list.* (1) The PHA administrative plan must state PHA policy on when applicant names may be removed from the waiting list. The policy may provide that the PHA will remove names of applicants who do not respond to PHA requests for information or updates.

(2) An PHA decision to withdraw from the waiting list the name of an applicant family that includes a person with disabilities is subject to reasonable accommodation in accordance with 24 CFR part 8. If the applicant did not respond to the PHA request for information or updates because of the family member's disability, the PHA must reinstate the applicant in the family's former position on the waiting list.

(d) *Family size.* (1) The order of admission from the waiting list may not be based on family size, or on the family unit size for which the family qualifies under the PHA occupancy policy.

(2) If the PHA does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the PHA may not skip the top family to admit an applicant with a smaller family unit size. Instead, the family at the top of the waiting list will be admitted when sufficient funds are available.

(e) *Funding for specified category of waiting list families.* When HUD awards an PHA program funding for a specified category of families on the waiting list, the PHA must select applicant families in the specified category.

(f) *Number of waiting lists.* A PHA must use a single waiting list for admission to its Section 8 tenant-based assistance program. However, the PHA may use a separate single waiting list for such admissions for a county or municipality.

(Approved by the Office of Management and Budget under OMB control number 2577-0169)

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 63 FR 23860, Apr. 30, 1998; 64 FR 26643, May 14, 1999; 65 FR 16821, Mar. 30, 2000]

§ 982.205 Waiting list: Different programs.

(a) *Merger and cross-listing*—(1) *Merged waiting list.* a PHA may merge the waiting list for tenant-based assistance with the PHA waiting list for admission to another assisted housing program, including a federal or local program. In admission from the merged waiting list, admission for each federal program is subject to federal regulations and requirements for the particular program.

(2) *Non-merged waiting list: Cross-listing.* If the PHA decides not to merge the waiting list for tenant-based assistance with the waiting list for the PHA's public housing program, project-based voucher program or moderate rehabilitation program:

(i) If the PHA's waiting list for tenant-based assistance is open when an applicant is placed on the waiting list for the PHA's public housing program, project-based voucher program or moderate rehabilitation program, the PHA must offer to place the applicant on its waiting list for tenant-based assistance.

(ii) If the PHA's waiting list for its public housing program, project-based voucher program or moderate rehabilitation program is open when an applicant is placed on the waiting list for its tenant-based program, and if the other program includes units suitable for the applicant, the PHA must offer to place the applicant on its waiting list for the other program.

(b) *Other housing assistance: Effect of application for, receipt or refusal.*

(1) For purposes of this section, "other housing subsidy" means a housing subsidy other than assistance under the voucher program. Housing subsidy includes subsidy assistance under a federal housing program (including public housing), a State housing program, or a local housing program.

(2) The PHA may not take any of the following actions because an applicant has applied for, received, or refused other housing assistance:

(i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;

(ii) Deny any admission preference for which the applicant is currently qualified;

(iii) Change the applicant's place on the waiting list based on preference, date and time of application, or other factors affecting selection under the PHA selection policy; or

(iv) Remove the applicant from the waiting list.

[59 FR 36682, July 18, 1994, as amended at 61 FR 27163, May 30, 1996; 63 FR 23860, Apr. 30, 1998; 64 FR 26643, May 14, 1999; 65 FR 16821, Mar. 30, 2000]

§ 982.206 Waiting list: Opening and closing; public notice.

(a) *Public notice.* (1) When the PHA opens a waiting list, the PHA must give public notice that families may apply for tenant-based assistance. The public notice must state where and when to apply.

(2) The PHA must give the public notice by publication in a local newspaper of general circulation, and also by minority media and other suitable means. The notice must comply with HUD fair housing requirements.

(3) The public notice must state any limitations on who may apply for available slots in the program.

(b) *Criteria defining what families may apply.* (1) The PHA may adopt criteria defining what families may apply for assistance under a public notice.

(2) If the waiting list is open, the PHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance because of action or inaction by members of the family) for the grounds stated in §§ 982.552 and 982.553.

(c) *Closing waiting list.* If the PHA determines that the existing waiting list contains an adequate pool for use of available program funding, the PHA may stop accepting new applications, or may accept only applications meeting criteria adopted by the PHA.

(Approved by the Office of Management and Budget under control number 2577-0169)

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 60 FR 45661, Sept. 1, 1995; 63 FR 23860, Apr. 30, 1998; 64 FR 26643, May 14, 1999]

§ 982.207 Waiting list: Local preferences in admission to program.

(a) *Establishment of PHA local preferences.* (1) The PHA may establish a system of local preferences for selection of families admitted to the program. PHA selection preferences must be described in the PHA administrative plan.

(2) The PHA system of local preferences must be based on local housing needs and priorities, as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. The PHA shall consider public comment on the proposed public housing agency plan (as received pursuant to § 903.17 of this chapter) and on the consolidated plan for the relevant jurisdiction (as received pursuant to part 91 of this title).

(3) The PHA may limit the number of applicants that may qualify for any local preference.

(4) The PHA shall not deny a local preference, nor otherwise exclude or penalize a family in admission to the program, solely because the family resides in a public housing project. The PHA may establish a preference for families residing in public housing who are victims of a crime of violence (as defined in 18 U.S.C. 16).

(b) *Particular local preferences.* (1) *Residency requirements or preferences.* (i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ("residency preference area"). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this title. Such

policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(iv) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(v) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* The PHA may adopt a preference for admission of working families (families where the head, spouse or sole member is employed). However, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities.

(3) *Preference for person with disabilities.* The PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for admission of persons with a specific disability.

(4) *Preference for victims of domestic violence.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless, or persons with disabilities.* The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

(c) *Selection among families with preference.* The PHA system of preferences may use either of the following to select among applicants on the waiting list with the same preference status:

- (1) Date and time of application; or
- (2) A drawing or other random choice technique.

(d) *Preference for higher-income families.* The PHA must not select families for admission to the program in an order different from the order on the waiting list for the purpose of selecting higher income families for admission to the program.

(e) *Verification of selection method.* The method for selecting applicants from a preference category must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the administrative plan.

[64 FR 26643, May 14, 1999, as amended at 64 FR 56912, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000]

Subpart F [Reserved]

Subpart G—Leasing a Unit

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.301 Information when family is selected.

(a) *PHA briefing of family.* (1) When the PHA selects a family to participate in a tenant-based program, the PHA must give the family an oral briefing. The briefing must include information on the following subjects:

(i) A description of how the program works;

(ii) Family and owner responsibilities; and

(iii) Where the family may lease a unit, including renting a dwelling unit inside or outside the PHA jurisdiction.

(2) For a family that qualifies to lease a unit outside the PHA jurisdiction under portability procedures, the briefing must include an explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction, or outside the PHA jurisdiction under portability procedures.

(3) If the family is currently living in a high poverty census tract in the PHA's jurisdiction, the briefing must also explain the advantages of moving to an area that does not have a high concentration of poor families.

(4) In briefing a family that includes any disabled person, the PHA must take appropriate steps to ensure effective

communication in accordance with 24 CFR 8.6.

(5) In briefing a welfare-to-work family, the PHA must include specification of any local obligations of a welfare-to-work family and an explanation that failure to meet these obligations is grounds for PHA denial of admission or termination of assistance.

(b) *Information packet.* When a family is selected to participate in the program, the PHA must give the family a packet that includes information on the following subjects:

(1) The term of the voucher, and PHA policy on any extensions or suspensions of the term. If the PHA allows extensions, the packet must explain how the family can request an extension;

(2) How the PHA determines the amount of the housing assistance payment for a family, including:

(i) How the PHA determines the payment standard for a family; and

(ii) How the PHA determines the total tenant payment for a family.

(3) How the PHA determines the maximum rent for an assisted unit;

(4) Where the family may lease a unit. For a family that qualifies to lease a unit outside the PHA jurisdiction under portability procedures, the information packet must include an explanation of how portability works;

(5) The HUD-required "tenancy addendum" that must be included in the lease;

(6) The form that the family uses to request PHA approval of the assisted tenancy, and an explanation of how to request such approval;

(7) A statement of the PHA policy on providing information about a family to prospective owners;

(8) PHA subsidy standards, including when the PHA will consider granting exceptions to the standards;

(9) The HUD brochure on how to select a unit;

(10) Information on federal, State and local equal opportunity laws, and a copy of the housing discrimination complaint form;

(11) A list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or help the family find a unit;

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(12) Notice that if the family includes a disabled person, the family may request a current listing of accessible units known to the PHA that may be available;

(13) Family obligations under the program;

(14) Family obligations under the program, including any obligations of a welfare-to-work family.

(15) PHA informal hearing procedures. This information must describe when the PHA is required to give a participant family the opportunity for an informal hearing, and how to request a hearing.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996; 64 FR 26644, May 14, 1999; 64 FR 50229, Sept. 15, 1999; 64 FR 56912, Oct. 21, 1999]

EFFECTIVE DATE NOTE: At 64 FR 50229, Sept. 15, 1999, §982.301 was amended by removing paragraph (b)(10) and redesignating paragraphs (b)(11) through (b)(16) as (b)(10) through (b)(15), effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 982.301 Information when family is selected.

* * * *

(b) * * *

(10) The HUD-required lead-based paint (LBP) brochure;

* * * *

§ 982.302 Issuance of voucher; Requesting PHA approval of assisted tenancy.

(a) When a family is selected, or when a participant family wants to move to another unit, the PHA issues a voucher to the family. The family may search for a unit.

(b) If the family finds a unit, and the owner is willing to lease the unit under the program, the family may request PHA approval of the tenancy. The PHA has the discretion whether to permit the family to submit more than one request at a time.

(c) The family must submit to the PHA a request for approval of the tenancy and a copy of the lease, including

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the HUD-prescribed tenancy addendum. The request must be submitted during the term of the voucher.

(d) The PHA specifies the procedure for requesting approval of the tenancy. The family must submit the request for approval of the tenancy in the form and manner required by the PHA.

[64 FR 26644, May 14, 1999]

§ 982.303 Term of voucher.

(a) *Initial term.* The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher.

(b) *Extensions of term.* (1) At its discretion, the PHA may grant a family one or more extensions of the initial voucher term in accordance with PHA policy as described in the PHA administrative plan. Any extension of the term is granted by PHA notice to the family.

(2) If the family needs and requests an extension of the initial voucher term as a reasonable accommodation, in accordance with part 8 of this title, to make the program accessible to a family member who is a person with disabilities, the PHA must extend the voucher term up to the term reasonably required for that purpose.

(c) *Suspension of term.* The PHA policy may or may not provide for suspension of the initial or any extended term of the voucher. At its discretion, and in accordance with PHA policy as described in the PHA administrative plan, the PHA may grant a family a suspension of the voucher term if the family has submitted a request for approval of the tenancy during the term of the voucher. (§982.4 (definition of "suspension"); §982.54(d)(2)) The PHA may grant a suspension for any part of the period after the family has submitted a request for approval of the tenancy up to the time when the PHA approves or denies the request.

(d) *Progress report by family to the PHA.* During the initial or any extended term of a voucher, the PHA may require the family to report progress in leasing a unit. Such reports

may be required at such intervals or times as determined by the PHA.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23860, Apr. 30, 1998; 64 FR 26644, May 14, 1999; 64 FR 56913, Oct. 21, 1999]

§ 982.304 Illegal discrimination: PHA assistance to family.

A family may claim that illegal discrimination because of race, color, religion, sex, national origin, age, familial status or disability prevents the family from finding or leasing a suitable unit with assistance under the program. The PHA must give the family information on how to fill out and file a housing discrimination complaint.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

§ 982.305 PHA approval of assisted tenancy.

(a) *Program requirements.* The PHA may not give approval for the family of the assisted tenancy, or execute a HAP contract, until the PHA has determined that all the following meet program requirements:

- (1) The unit is eligible;
- (2) The unit has been inspected by the PHA and passes HQS;
- (3) The lease includes the tenancy addendum;
- (4) The rent to owner is reasonable; and
- (5) At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share does not exceed 40 percent of the family's monthly adjusted income.

(b) *Actions before lease term.* (1) All of the following must always be completed before the beginning of the initial term of the lease for a unit:

- (i) The PHA has inspected the unit and has determined that the unit satisfies the HQS;
- (ii) The landlord and the tenant have executed the lease (including the HUD-prescribed tenancy addendum, and the

lead-based paint disclosure information as required in § 35.13(b) of this title); and

(2)(i) The PHA must inspect the unit, determine whether the unit satisfies the HQS, and notify the family and owner of the determination:

(A) In the case of a PHA with up to 1250 budgeted units in its tenant-based program, within fifteen days after the family and the owner submit a request for approval of the tenancy.

(B) In the case of a PHA with more than 1250 budgeted units in its tenant-based program, within a reasonable time after the family submits a request for approval of the tenancy. To the extent practicable, such inspection and determination must be completed within fifteen days after the family and the owner submit a request for approval of the tenancy.

(ii) The fifteen day clock (under paragraph (b)(2)(i)(A) or paragraph (b)(2)(i)(B) of this section) is suspended during any period when the unit is not available for inspection.

(c) *When HAP contract is executed.* (1) The PHA must use best efforts to execute the HAP contract before the beginning of the lease term. The HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

(2) The PHA may not pay any housing assistance payment to the owner until the HAP contract has been executed.

(3) If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

(4) Any HAP contract executed after the 60 day period is void, and the PHA may not pay any housing assistance payment to the owner.

(d) *Notice to family and owner.* After receiving the family's request for approval of the assisted tenancy, the PHA must promptly notify the family and owner whether the assisted tenancy is approved.

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(e) *Procedure after PHA approval.* If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 26644, May 14, 1999; 64 FR 56913, Oct. 21, 1999; 64 FR 59622, Nov. 3, 1999; 65 FR 16818, Mar. 30, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16818, Mar. 30, 2000, § 982.305 was amended by revising paragraph (b)(1)(ii), effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(1) * * *

(ii) The landlord and the tenant have executed the lease (including the HUD-prescribed tenancy addendum); and

* * * * *

§ 982.306 PHA disapproval of owner.

(a) The PHA must not approve an assisted tenancy if the PHA has been informed (by HUD or otherwise) that the owner is debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

(b) When directed by HUD, the PHA must not approve an assisted tenancy if:

(1) The federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements, and such action is pending; or

(2) A court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements.

(c) In its administrative discretion, the PHA may deny approval of an assisted tenancy for any of the following reasons:

(1) The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

(2) The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

(3) The owner has engaged in any drug-related criminal activity or any violent criminal activity;

(4) The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

(5) The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:

(i) Threatens the right to peaceful enjoyment of the premises by other residents;

(ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing;

(iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or

(iv) Is drug-related criminal activity or violent criminal activity; or

(6) The owner has a history or practice of renting units that fail to meet State or local housing codes; or

(7) The owner has not paid State or local real estate taxes, fines or assessments.

(d) The PHA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. This restriction against PHA approval of a unit only applies at the time a family initially receives tenant-based assistance for occupancy of a particular unit, but does not apply to PHA approval of a new tenancy with continued tenant-based assistance in the same unit.

(e) Nothing in this rule is intended to give any owner any right to participate in the program.

(f) For purposes of this section, “owner” includes a principal or other interested party.

[60 FR 34695, July 3, 1995, as amended at 63 FR 27437, May 18, 1998; 64 FR 26644, May 14, 1999; 64 FR 56913, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000]

§ 982.307 Tenant screening.

(a) *PHA option and owner responsibility.* (1) The PHA has no liability or responsibility to the owner or other persons for the family’s behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy. The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(2) The owner is responsible for screening and selection of the family to occupy the owner’s unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner.

(3) The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family’s background with respect to such factors as:

- (i) Payment of rent and utility bills;
- (ii) Caring for a unit and premises;
- (iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;
- (iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and
- (v) Compliance with other essential conditions of tenancy.

(b) *PHA information about tenant.* (1) The PHA must give the owner:

- (i) The family’s current and prior address (as shown in the PHA records); and
- (ii) The name and address (if known to the PHA) of the landlord at the family’s current and prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession, about the family, including information about the tenancy history of family members, or about drug-trafficking by family members.

(3) The PHA must give the family a statement of the PHA policy on providing information to owners. The statement must be included in the information packet that is given to a family selected to participate in the program. The PHA policy must provide that the PHA will give the same types of information to all families and to all owners.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996; 64 FR 26645, May 14, 1999; 64 FR 49658, Sept. 14, 1999]

§ 982.308 Lease and tenancy.

(a) *Tenant’s legal capacity.* The tenant must have legal capacity to enter a lease under State and local law. “Legal capacity” means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

(b) *Form of lease.* (1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form (plus the HUD-prescribed tenancy addendum). If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease (including the HUD-prescribed tenancy addendum). The HAP contract prescribed by HUD will contain the owner’s certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

(c) *State and local law.* The PHA may review the lease to determine if the lease complies with State and local law. The PHA may decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law.

(d) *Required information.* The lease must specify all of the following:

- (1) The names of the owner and the tenant;

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(2) The unit rented (address, apartment number, and any other information needed to identify the contract unit);

(3) The term of the lease (initial term and any provisions for renewal);

(4) The amount of the monthly rent to owner; and

(5) A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

(e) *Reasonable rent.* The rent to owner must be reasonable (see § 982.507).

(f) *Tenancy addendum.* (1) The HAP contract form required by HUD shall include an addendum (the “tenancy addendum”), that sets forth:

(i) The tenancy requirements for the program (in accordance with this section and §§ 982.309 and 982.310); and

(ii) The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide).

(2) All provisions in the HUD-required tenancy addendum must be added word-for-word to the owner’s standard form lease that is used by the owner for unassisted tenants. The tenant shall have the right to enforce the tenancy addendum against the owner, and the terms of the tenancy addendum shall prevail over any other provisions of the lease.

(g) *Changes in lease or rent.* (1) If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of this section.

(2) In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

(i) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;

(ii) If there are any changes in lease provisions governing the term of the lease;

(iii) If the family moves to a new unit, even if the unit is in the same building or complex.

(3) PHA approval of the tenancy, and execution of a new HAP contract, are not required for changes in the lease other than as specified in paragraph (g)(2) of this section.

(4) The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and any such changes shall be subject to rent reasonableness requirements (see § 982.503).

[64 FR 26645, May 14, 1999, as amended at 64 FR 56913, Oct. 21, 1999]

§ 982.309 Term of assisted tenancy.

(a) *Initial term of lease.* (1) Except as provided in paragraph (a)(2) of this section, the initial lease term must be for at least one year.

(2) The PHA may approve a shorter initial lease term if the PHA determines that:

(i) Such shorter term would improve housing opportunities for the tenant; and

(ii) Such shorter term is the prevailing local market practice.

(3) During the initial term of the lease, the owner may not raise the rent to owner.

(4) The PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC.

(b) *Term of HAP contract.* (1) The term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

(2) The HAP contract terminates if any of the following occurs:

(i) The lease is terminated by the owner or the tenant;

(ii) The PHA terminates the HAP contract; or

(iii) The PHA terminates assistance for the family.

(c) *Family responsibility.* (1) If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice of termination at the same time. Failure to do this is a breach of family obligations under the program.

(2) The family must notify the PHA and the owner before the family moves out of the unit. Failure to do this is a

breach of family obligations under the program.

[64 FR 26645, May 14, 1999]

§ 982.310 Owner termination of tenancy.

(a) *Grounds.* During the term of the lease, the owner may not terminate the tenancy except on the following grounds:

(1) Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease;

(2) Violation of federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or

(3) Other good cause.

(b) *Nonpayment by PHA: Not grounds for termination of tenancy.* (1) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA.

(2) The PHA failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner. During the term of the lease the owner may not terminate the tenancy of the family for nonpayment of the PHA housing assistance payment.

(c) *Criminal activity.* Any of the following types of criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control shall be cause for termination of tenancy:

(1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;

(2) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or

(3) Any drug-related criminal activity on or near the premises.

(d) *Other good cause.* (1) "Other good cause" for termination of tenancy by the owner may include, but is not limited to, any of the following examples:

(i) Failure by the family to accept the offer of a new lease or revision;

(ii) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;

(iii) The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or

(iv) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

(2) During the initial lease term, the owner may not terminate the tenancy for "other good cause", unless the owner is terminating the tenancy because of something the family did or failed to do. For example, during this period, the owner may not terminate the tenancy for "other good cause" based on any of the following grounds: failure by the family to accept the offer of a new lease or revision; the owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy (see paragraph (d)(1)(iv) of this section).

(e) *Owner notice—(1) Notice of grounds.*

(i) The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

(ii) The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

(2) *Eviction notice.* (i) Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action.

(ii) The owner must give the PHA a copy of any owner eviction notice to the tenant.

(f) *Eviction by court action.* The owner may only evict the tenant from the unit by instituting a court action.

(g) *Regulations not applicable.* 24 CFR part 247 (concerning evictions from certain subsidized and HUD-owned

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projects) does not apply to a tenancy assisted under this part 982.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 26645, May 14, 1999; 64 FR 56913, Oct. 21, 1999]

§ 982.311 When assistance is paid.

(a) *Payments under HAP contract.* Housing assistance payments are paid to the owner in accordance with the terms of the HAP contract. Housing assistance payments may only be paid to the owner during the lease term, and while the family is residing in the unit.

(b) *Termination of payment: When owner terminates the lease.* Housing assistance payments terminate when the lease is terminated by the owner in accordance with the lease. However, if the owner has commenced the process to evict the tenant, and if the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner in accordance with the HAP contract until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The HA may continue such payments until the family moves from or is evicted from the unit.

(c) *Termination of payment: Other reasons for termination.* Housing assistance payments terminate if:

- (1) The lease terminates;
- (2) The HAP contract terminates; or
- (3) The PHA terminates assistance for the family.

(d) *Family move-out.* (1) If the family moves out of the unit, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

(2) If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the

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new unit, is not considered to constitute a duplicative housing subsidy.

§ 982.312 Absence from unit.

(a) The family may be absent from the unit for brief periods. For longer absences, the PHA administrative plan establishes the PHA policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days in any circumstance, or for any reason. At its discretion, the PHA may allow absence for a lesser period in accordance with PHA policy.

(b) Housing assistance payments terminate if the family is absent for longer than the maximum period permitted. The term of the HAP contract and assisted lease also terminate.

(The owner must reimburse the PHA for any housing assistance payment for the period after the termination.)

(c) Absence means that no member of the family is residing in the unit.

(d)(1) The family must supply any information or certification requested by the PHA to verify that the family is residing in the unit, or relating to family absence from the unit. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit, including any information requested on the purposes of family absences.

(2) The PHA may adopt appropriate techniques to verify family occupancy or absence, including letters to the family at the unit, phone calls, visits or questions to the landlord or neighbors.

(e) The PHA administrative plan must state the PHA policies on family absence from the dwelling unit. The PHA absence policy includes:

(1) How the PHA determines whether or when the family may be absent, and for how long. For example, the PHA may establish policies on absences because of vacation, hospitalization or imprisonment; and

(2) Any provision for resumption of assistance after an absence, including readmission or resumption of assistance to the family.

§ 982.313 Security deposit: Amounts owed by tenant.

(a) The owner may collect a security deposit from the tenant.

(b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) When the tenant moves out of the dwelling unit, the owner, subject to State or local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid rent payable by the tenant, damages to the unit or for other amounts the tenant owes under the lease.

(d) The owner must give the tenant a written list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the tenant.

(e) If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant.

§ 982.314 Move with continued tenant-based assistance.

(a) *Applicability.* This section states when a participant family may move to a new unit with continued tenant-based assistance:

(b) *When family may move.* A family may move to a new unit if:

(1) The assisted lease for the old unit has terminated. This includes a termination because:

(i) The PHA has terminated the HAP contract for the owner's breach; or

(ii) The lease has terminated by mutual agreement of the owner and the tenant.

(2) The owner has given the tenant a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the tenant.

(3) The tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach or otherwise).

(c) *How many moves.* (1) A participant family may move one or more times with continued assistance under the program, either inside the PHA jurisdiction, or under the portability procedures. (See § 982.353)

(2) The PHA may establish:

(i) Policies that prohibit any move by the family during the initial lease term; and

(ii) Policies that prohibit more than one move by the family during any one year period.

(3) The PHA policies may apply to moves within the PHA jurisdiction by a participant family, and to moves by a participant family outside the PHA jurisdiction under portability procedures.

(d) *Notice that family wants to move.* (1) If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice at the same time.

(2) If the family wants to move to a new unit, the family must notify the PHA and the owner before moving from the old unit. If the family wants to move to a new unit that is located outside the initial PHA jurisdiction, the notice to the initial PHA must specify the area where the family wants to move. See portability procedures in subpart H of this part.

(e) *When PHA may deny permission to move.* (1) The PHA may deny permission to move if the PHA does not have sufficient funding for continued assistance.

(2) At any time, the PHA may deny permission to move in accordance with § 982.552 (grounds for denial or termination of assistance).

[60 FR 34695, July 3, 1995, as amended at 64 FR 56913, Oct. 21, 1999]

§ 982.315 Family break-up.

(a) The PHA has discretion to determine which members of an assisted family continue to receive assistance in the program if the family breaks up. The PHA administrative plan must state PHA policies on how to decide who remains in the program if the family breaks up.

(b) The factors to be considered in making this decision under the PHA policy may include:

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(1) Whether the assistance should remain with family members remaining in the original assisted unit.

(2) The interest of minor children or of ill, elderly or disabled family members.

(3) Whether family members are forced to leave the unit as a result or actual or threatened physical violence against family members by a spouse or other member of the household.

(4) Other factors specified by the PHA.

(c) If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement or judicial decree, the PHA is bound by the court's determination of which family members continue to receive assistance in the program.

§ 982.316 Live-in aide.

(a) A family that consists of one or more elderly, near-elderly or disabled persons may request that the PHA approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability. (See § 982.402(b)(6) concerning effect of live-in aide on family unit size.)

(b) At any time, the PHA may refuse to approve a particular person as a live-in aide, or may withdraw such approval, if:

(1) The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

(2) The person commits drug-related criminal activity or violent criminal activity; or

(3) The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

[63 FR 23860, Apr. 30, 1998; 63 FR 31625, June 10, 1998]

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Subpart H—Where Family Can Live and Move

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.351 Overview.

This subpart describes what kind of housing is eligible for leasing, and the areas where a family can live with tenant-based assistance. The subpart covers:

(a) Assistance for a family that rents a dwelling unit in the jurisdiction of the PHA that originally selected the family for tenant-based assistance.

(b) "Portability" assistance for a family PHA rents a unit outside the jurisdiction of the initial PHA.

§ 982.352 Eligible housing.

(a) *Ineligible housing.* The following types of housing may not be assisted by a PHA in the tenant-based programs:

(1) A public housing or Indian housing unit;

(2) A unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f);

(3) Nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services;

(4) College or other school dormitories;

(5) Units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(6) A unit occupied by its owner or by a person with any interest in the dwelling unit. (However, assistance may be provided for a family residing in a cooperative. Assistance may be provided to the owner of a manufactured home leasing a manufactured home space. In the case of shared housing, an owner unrelated to the assisted family may reside in the unit, but assistance may not be paid on behalf of the resident owner. For provisions on cooperative housing, manufactured home space rental, and shared housing, see part 982, subpart M.); and

(7) For provisions on PHA disapproval of an owner, see § 982.306.

(b) *PHA-owned housing.* (1) A unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA) may only be assisted under the tenant-based program if all the following conditions are satisfied:

(i) The PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease, and a PHA-owned unit is freely selected by the family, without PHA pressure or steering.

(ii) The unit is not ineligible housing.

(iii) During assisted occupancy, the family may not benefit from any form of housing subsidy that is prohibited under paragraph (c) of this section.

(iv)(A) The PHA must obtain the services of an independent entity to perform the following PHA functions as required under the program rule:

(1) To determine rent reasonableness in accordance with § 982.507. The independent agency shall communicate the rent reasonableness determination to the family and the PHA.

(2) To assist the family negotiate the rent to owner in accordance with § 982.506.

(3) To inspect the unit for compliance with the HQS in accordance with § 982.305(a) and § 982.405 (except that § 982.405(e) is not applicable). The independent agency shall communicate the results of each such inspection to the family and the PHA.

(B) The independent agency used to perform these functions must be approved by HUD. The independent agency may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government), or may be another HUD-approved independent agency.

(C) The PHA may compensate the independent agency from PHA ongoing administrative fee income for the services performed by the independent agency. The PHA may not use other program receipts to compensate the independent agency for such services. The PHA and the independent agency may not charge the family any fee or

charge for the services provided by the independent agency.

(c) *Prohibition against other housing subsidy.* A family may not receive the benefit of tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

(1) Public or Indian housing assistance;

(2) Other Section 8 assistance (including other tenant-based assistance);

(3) Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

(4) Section 101 rent supplements;

(5) Section 236 rental assistance payments;

(6) Tenant-based assistance under the HOME Program;

(7) Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);

(8) Any local or State rent subsidy;

(9) Section 202 supportive housing for the elderly;

(10) Section 811 supportive housing for persons with disabilities;

(11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or

(12) Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, "housing subsidy" does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23860, Apr. 30, 1998; 64 FR 13057, Mar. 16, 1999; 64 FR 26645, May 14, 1999]

§ 982.353 Where family can lease a unit with tenant-based assistance.

(a) *Assistance in the initial PHA jurisdiction.* The family may receive tenant-based assistance to lease a unit located anywhere in the jurisdiction (as determined by State and local law) of the initial PHA. HUD may nevertheless restrict the family's right to lease such a

unit anywhere in such jurisdiction if HUD determines that limitations on a family's opportunity to select among available units in that jurisdiction are appropriate to achieve desegregation goals in accordance with obligations generated by a court order or consent decree.

(b) *Portability: Assistance outside the initial PHA jurisdiction.* Subject to paragraph (c) of this section, and to § 982.552 and § 982.553, a voucher-holder or participant family has the right to receive tenant-based voucher assistance in accordance with requirements of this part to lease a unit outside the initial PHA jurisdiction, anywhere in the United States, in the jurisdiction of a PHA with a tenant-based program under this part. The initial PHA must not provide such portable assistance for a participant if the family has moved out of its assisted unit in violation of the lease.

(c) *Nonresident applicants.* (1) This paragraph (c) applies if neither the household head or spouse of an assisted family already had a "domicile" (legal residence) in the jurisdiction of the initial PHA at the time when the family first submitted an application for participation in the program to the initial PHA.

(2) The following apply during the 12 month period from the time when a family described in paragraph (c)(1) of this section is admitted to the program:

(i) The family may lease a unit anywhere in the jurisdiction of the initial PHA;

(ii) The family does not have any right to portability;

(iii) The initial PHA may choose to allow portability during this period.

(3) If both the initial PHA and a receiving PHA agree, the family may lease a unit outside the PHA jurisdiction under portability procedures.

(d) *Income eligibility.* (1) For admission to the program, a family must be income eligible in the area where the family initially leases a unit with assistance under the program.

(2) If a portable family is a participant in the initial PHA Section 8 tenant-based program (either the PHA voucher program or the PHA certificate program), income eligibility is not

redetermined when the family moves to the receiving PHA program under portability procedures.

(3) Except as provided in paragraph (d)(2) of this section, a portable family must be income eligible for admission to the voucher program in the area where the family leases a unit under portability procedures.

(e) *Leasing in-place.* If the dwelling unit is approvable, a family may select the dwelling unit occupied by the family before selection for participation in the program.

(f) *Freedom of choice.* The PHA may not directly or indirectly reduce the family's opportunity to select among available units except as provided in paragraph (a) of this section, or elsewhere in this part 982 (e.g. prohibition on use of ineligible housing, housing not meeting HQS, or housing for which the rent to owner exceeds a reasonable rent).

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 61 FR 42131, Aug. 13, 1996; 64 FR 26646, May 14, 1999]

§ 982.355 Portability: Administration by receiving PHA.

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial PHA jurisdiction, another PHA (the "receiving PHA") must administer assistance for the family if a PHA with a tenant-based program has jurisdiction in the area where the unit is located.

(b) In the conditions described in paragraph (a) of this section, a PHA with jurisdiction in the area where the family wants to lease a unit must issue a voucher to the family. If there is more than one such PHA, the initial PHA may choose the receiving PHA.

(c) *Portability procedures.* (1) The receiving PHA does not redetermine eligibility for a portable family that was already receiving assistance in the initial PHA Section 8 tenant-based program (either the PHA voucher program or certificate program). However, for a portable family that was not already receiving assistance in the PHA tenant-based program, the initial PHA must determine whether the family is eligible for admission to the receiving PHA voucher program.

(2) The initial PHA must advise the family how to contact and request assistance from the receiving PHA. The initial PHA must promptly notify the receiving PHA to expect the family.

(3) The family must promptly contact the receiving PHA, and comply with receiving PHA procedures for incoming portable families.

(4) The initial PHA must give the receiving PHA the most recent HUD Form 50058 (Family Report) for the family, and related verification information. If the receiving PHA opts to conduct a new reexamination, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit unless the recertification is necessary to determine income eligibility.

(5) When the portable family requests assistance from the receiving PHA, the receiving PHA must promptly inform the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family, or will absorb the family into its own program.

(6) The receiving PHA must issue a voucher to the family. The term of the receiving PHA voucher may not expire before the expiration date of any initial PHA voucher. The receiving PHA must determine whether to extend the voucher term. The family must submit a request for approval of the tenancy to the receiving PHA during the term of the receiving PHA voucher.

(7) The receiving PHA must determine the family unit size for the portable family. The family unit size is determined in accordance with the subsidy standards of the receiving PHA.

(8) The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program, or if the family fails to submit a request for approval of the tenancy for an eligible unit within the term of the voucher.

(9) To provide tenant-based assistance for portable families, the receiving PHA must perform all PHA program functions, such as reexaminations of family income and composition. At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate as-

sistance to the family in accordance with §§ 982.552 and 982.553.

(10) When the family has a right to lease a unit in the receiving PHA jurisdiction under portability procedures in accordance with § 982.353(b), the receiving PHA must provide assistance for the family. Receiving PHA procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA waiting list is not used. However, the receiving PHA may deny or terminate assistance for family action or inaction in accordance with §§ 982.552 and 982.553.

(d) *Absorption by the receiving PHA.* (1) If funding is available under the consolidated ACC for the receiving PHA voucher program when the portable family is received, the receiving PHA may absorb the family into the receiving PHA voucher program. After absorption, the family is assisted with funds available under the consolidated ACC for the receiving PHA tenant-based program.

(2) HUD may require that the receiving PHA absorb all or a portion of the portable families.

(e) *Portability Billing.* (1) To cover assistance for a portable family, the receiving PHA may bill the initial PHA for housing assistance payments and administrative fees. This paragraph (e) describes the billing procedure.

(2) The initial PHA must promptly reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA for the portable family. The amount of the housing assistance payment for a portable family in the receiving PHA program is determined in the same manner as for other families in the receiving PHA program.

(3) The initial PHA must promptly reimburse the receiving PHA for 80 percent of the initial PHA on-going administrative fee for each unit month that the family receives assistance under the tenant-based programs from the receiving PHA. If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

(4) HUD may reduce the administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements.

(5) In administration of portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial and receiving PHA must comply with billing and payment deadlines under the financial procedures.

(6) a PHA must manage the PHA tenant-based program in a manner that ensures that the PHA has the financial ability to provide assistance for families that move out of the PHA program under the portability procedures that have not been absorbed by the receiving PHA, as well as for families that remain in the PHA program.

(7) When a portable family moves out of the tenant-based program of a receiving PHA that has not absorbed the family, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA, and the first receiving PHA is no longer required to provide assistance for the family.

(f) *Portability funding.* (1) HUD may transfer funds for assistance to portable families to the receiving PHA from funds available under the initial PHA ACC.

(2) HUD may provide additional funding (e.g., funds for incremental units) to the initial PHA for funds transferred to a receiving PHA for portability purposes.

(3) HUD may provide additional funding (e.g., funds for incremental units) to the receiving PHA for absorption of portable families.

(4) HUD may require the receiving PHA to absorb portable families.

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 64 FR 26646, May 14, 1999; 64 FR 56914, Oct. 21, 1999]

Subpart I—Dwelling Unit: Housing Quality Standards, Subsidy Standards, Inspection and Maintenance

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.401 Housing quality standards (HQS).

(a) *Performance and acceptability requirements.* (1) This section states the

housing quality standards (HQS) for housing assisted in the programs.

(2)(i) The HQS consist of:

(A) Performance requirements; and

(B) Acceptability criteria or HUD approved variations in the acceptability criteria.

(ii) This section states performance and acceptability criteria for these key aspects of housing quality:

(A) Sanitary facilities;

(B) Food preparation and refuse disposal;

(C) Space and security;

(D) Thermal environment;

(E) Illumination and electricity;

(F) Structure and materials;

(G) Interior air quality;

(H) Water supply;

(I) Lead-based paint;

(J) Access;

(K) Site and neighborhood;

(L) Sanitary condition; and

(M) Smoke detectors.

(3) All program housing must meet the HQS performance requirements both at commencement of assisted occupancy, and throughout the assisted tenancy.

(4)(i) In addition to meeting HQS performance requirements, the housing must meet the acceptability criteria stated in this section, unless variations are approved by HUD.

(ii) HUD may approve acceptability criteria variations for the following purposes:

(A) Variations which apply standards in local housing codes or other codes adopted by the PHA; or

(B) Variations because of local climatic or geographic conditions.

(iii) Acceptability criteria variations may only be approved by HUD pursuant to paragraph (a)(4)(ii) of this section if such variations either:

(A) Meet or exceed the performance requirements; or

(B) Significantly expand affordable housing opportunities for families assisted under the program.

(iv) HUD will not approve any acceptability criteria variation if HUD believes that such variation is likely to adversely affect the health or safety of participant families, or severely restrict housing choice.

(b) *Sanitary facilities*—(1) *Performance requirements.* The dwelling unit must

include sanitary facilities located in the unit. The sanitary facilities must be in proper operating condition, and adequate for personal cleanliness and the disposal of human waste. The sanitary facilities must be usable in privacy.

(2) *Acceptability criteria.* (i) The bathroom must be located in a separate private room and have a flush toilet in proper operating condition.

(ii) The dwelling unit must have a fixed basin in proper operating condition, with a sink trap and hot and cold running water.

(iii) The dwelling unit must have a shower or a tub in proper operating condition with hot and cold running water.

(iv) The facilities must utilize an approvable public or private disposal system (including a locally approvable septic system).

(c) *Food preparation and refuse disposal—(1) Performance requirement.* (i) The dwelling unit must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner.

(ii) There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(2) *Acceptability criteria.* (i) The dwelling unit must have an oven, and a stove or range, and a refrigerator of appropriate size for the family. All of the equipment must be in proper operating condition. The equipment may be supplied by either the owner or the family. A microwave oven may be substituted for a tenant-supplied oven and stove or range. A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees and microwave ovens are furnished instead of an oven and stove or range to both subsidized and unsubsidized tenants in the building or premises.

(ii) The dwelling unit must have a kitchen sink in proper operating condition, with a sink trap and hot and cold running water. The sink must drain into an approvable public or private system.

(iii) The dwelling unit must have space for the storage, preparation, and serving of food.

(iv) There must be facilities and services for the sanitary disposal of food waste and refuse, including temporary storage facilities where necessary (e.g., garbage cans).

(d) *Space and security—(1) Performance requirement.* The dwelling unit must provide adequate space and security for the family.

(2) *Acceptability criteria.* (i) At a minimum, the dwelling unit must have a living room, a kitchen area, and a bathroom.

(ii) The dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(iii) Dwelling unit windows that are accessible from the outside, such as basement, first floor, and fire escape windows, must be lockable (such as window units with sash pins or sash locks, and combination windows with latches). Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.

(iv) The exterior doors of the dwelling unit must be lockable. Exterior doors are doors by which someone can enter or exit the dwelling unit.

(e) *Thermal environment—(1) Performance requirement.* The dwelling unit must have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability criteria.* (i) There must be a safe system for heating the dwelling unit (and a safe cooling system, where present). The system must be in proper operating condition. The system must be able to provide adequate heat (and cooling, if applicable), either directly or indirectly, to each room, in order to assure a healthy living environment appropriate to the climate.

(ii) The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Electric heaters are acceptable.

(f) *Illumination and electricity—(1) Performance requirement.* Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and

safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. The electrical fixtures and wiring must ensure safety from fire.

(2) *Acceptability criteria.* (i) There must be at least one window in the living room and in each sleeping room.

(ii) The kitchen area and the bathroom must have a permanent ceiling or wall light fixture in proper operating condition. The kitchen area must also have at least one electrical outlet in proper operating condition.

(iii) The living room and each bedroom must have at least two electrical outlets in proper operating condition. Permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets.

(g) *Structure and materials*—(1) *Performance requirement.* The dwelling unit must be structurally sound. The structure must not present any threat to the health and safety of the occupants and must protect the occupants from the environment.

(2) *Acceptability criteria.* (i) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling, missing parts, or other serious damage.

(ii) The roof must be structurally sound and weathertight.

(iii) The exterior wall structure and surface must not have any serious defects such as serious leaning, buckling, sagging, large holes, or defects that may result in air infiltration or vermin infestation.

(iv) The condition and equipment of interior and exterior stairs, halls, porches, walkways, etc., must not present a danger of tripping and falling. For example, broken or missing steps or loose boards are unacceptable.

(v) Elevators must be working and safe.

(h) *Interior air quality*—(1) *Performance requirement.* The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.

(2) *Acceptability criteria.* (i) The dwelling unit must be free from dangerous levels of air pollution from carbon

monoxide, sewer gas, fuel gas, dust, and other harmful pollutants.

(ii) There must be adequate air circulation in the dwelling unit.

(iii) Bathroom areas must have one openable window or other adequate exhaust ventilation.

(iv) Any room used for sleeping must have at least one window. If the window is designed to be openable, the window must work.

(i) *Water supply*—(1) *Performance requirement.* The water supply must be free from contamination.

(2) *Acceptability criteria.* The dwelling unit must be served by an approvable public or private water supply that is sanitary and free from contamination.

(j) *Lead-based paint performance requirement.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, M, and R of this title apply to units assisted under this part.

(k) *Access performance requirement.* The dwelling unit must be able to be used and maintained without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire (such as fire stairs or egress through windows).

(l) *Site and Neighborhood*—(1) *Performance requirement.* The site and neighborhood must be reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.

(2) *Acceptability criteria.* The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(m) *Sanitary condition*—(1) *Performance requirement.* The dwelling unit and its equipment must be in sanitary condition.

(2) *Acceptability criteria.* The dwelling unit and its equipment must be free of vermin and rodent infestation.

(n) *Smoke detectors performance requirement*—(1) Except as provided in paragraph (n)(2) of this section, each dwelling unit must have at least one battery-operated or hard-wired smoke detector, in proper operating condition, on each level of the dwelling unit, including basements but excepting crawl spaces and unfinished attics. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, - smoke detectors must have an alarm system, designed for hearing-impaired persons as specified in NFPA 74 (or successor standards).

(2) For units assisted prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors prior to April 24, 1993 in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992, (57 FR 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit).

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 63 FR 23861, Apr. 30, 1998; 64 FR 26646, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 50230, Sept. 15, 1999]

EFFECTIVE DATE NOTE: At 64 FR 50230, Sept. 15, 1999, § 982.401 was amended by revising paragraph (j), effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 982.401 Housing quality standards (HQS).

* * * * *

(j) *Lead-based paint performance requirement*—(1) *Purpose and applicability.* (i) The purpose of paragraph (j) of this section is to implement section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning for units assisted

under this part. Paragraph (j) of this section is issued under 24 CFR 35.24 (b)(4) and supersedes, for all housing to which it applies, the requirements of subpart C of 24 CFR part 35.

(ii) The requirements of paragraph (j) of this section do not apply to 0-bedroom units, units that are certified by a qualified inspector to be free of lead-based paint, or units designated exclusively for elderly. The requirements of subpart A of 24 CFR part 35 apply to all units constructed prior to 1978 covered by a HAP contract under part 982.

(2) *Definitions.*

Chewable surface. Protruding painted surfaces up to five feet from the floor or ground that are readily accessible to children under six years of age; for example, protruding corners, window sills and frames, doors and frames, and other protruding woodwork.

Component. An element of a residential structure identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

Defective paint surface. A surface on which the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level (EBL). Excessive absorption of lead. Excessive absorption is a confirmed concentration of lead in whole blood of 20 ug/dl (micrograms of lead per deciliter) for a single test or of 15–19 ug/dl in two consecutive tests 3–4 months apart.

HEPA means a high efficiency particle accumulator as used in lead abatement vacuum cleaners.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 milligram per centimeter squared (mg/cm²), or 0.5 percent by weight or 5000 parts per million (PPM).

(3) *Requirements for pre-1978 units with children under 6.* (i) If a dwelling unit constructed before 1978 is occupied by a family that includes a child under the age of six years, the initial and each periodic inspection (as required under this part), must include a visual inspection for defective paint surfaces. If defective paint surfaces are found, such surfaces must be treated in accordance with paragraph (j)(6) of this section.

(ii) The HA may exempt from such treatment defective paint surfaces that are found in a report by a qualified lead-based paint inspector not to be lead-based paint, as defined in paragraph (j)(2) of this section. For purposes of this section, a qualified lead-based paint inspector is a State or local health or housing agency, a lead-based paint inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD.

(iii) Treatment of defective paint surfaces required under this section must be completed within 30 calendar days of HA notification to the owner. When weather conditions prevent treatment of the defective paint conditions on exterior surfaces within the 30 day period, treatment as required by paragraph (j)(6) of this section may be delayed for a reasonable time.

(iv) The requirements in this paragraph (j)(3) apply to:

(A) All painted interior surfaces within the unit (including ceilings but excluding furniture);

(B) The entrance and hallway providing access to a unit in a multi-unit building; and

(C) Exterior surfaces up to five feet from the floor or ground that are readily accessible to children under six years of age (including walls, stairs, decks, porches, railings, windows and doors, but excluding outbuildings such as garages and sheds).

(4) *Additional requirements for pre-1978 units with children under 6 with an EBL.* (i) In addition to the requirements of paragraph (j)(3) of this section, for a dwelling unit constructed before 1978 that is occupied by a family with a child under the age of six years with an identified EBL condition, the initial and each periodic inspection (as required under this part) must include a test for lead-based paint on chewable surfaces. Testing is not required if previous testing of chewable surfaces is negative for lead-based paint or if the chewable surfaces have already been treated.

(ii) Testing must be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Where lead-based paint on chewable surfaces is identified, treatment of the paint surface in accordance with paragraph (j)(6) of this section is required, and treatment shall be completed within the time limits in paragraph (j)(3) of this section.

(iii) The requirements in paragraph (j)(4) of this section apply to all protruding painted surfaces up to five feet from the floor or ground that are readily accessible to children under six years of age:

(A) Within the unit;

(B) The entrance and hallway providing access to a unit in a multi-unit building; and

(C) Exterior surfaces (including walls, stairs, decks, porches, railings, windows and doors, but excluding outbuildings such as garages and sheds).

(5) *Treatment of chewable surfaces without testing.* In lieu of the procedures set forth in paragraph (j)(4) of this section, the HA may, at its discretion, waive the testing requirement and require the owner to treat all inte-

rior and exterior chewable surfaces in accordance with the methods set out in paragraph (j)(6) of this section.

(6) *Treatment methods and requirements.* Treatment of defective paint surfaces and chewable surfaces must consist of covering or removal of the paint in accordance with the following requirements:

(i) A defective paint surface shall be treated if the total area of defective paint on a component is:

(A) More than 10 square feet on an exterior wall;

(B) More than 2 square feet on an interior or exterior component with a large surface area, excluding exterior walls and including, but not limited to, ceilings, floors, doors, and interior walls; or

(C) More than 10 percent of the total surface area on an interior or exterior component with a small surface area, including, but not limited to, window sills, baseboards and trim.

(ii) Acceptable methods of treatment are: removal by wet scraping, wet sanding, chemical stripping on or off site, replacing painted components, scraping with infra-red or coil type heat gun with temperatures below 1100 degrees, HEPA vacuum sanding, HEPA vacuum needle gun, contained hydroblasting or high pressure wash with HEPA vacuum, and abrasive sandblasting with HEPA vacuum. Surfaces must be covered with durable materials with joints and edges sealed and caulked as needed to prevent the escape of lead contaminated dust.

(iii) Prohibited methods of removal are: open flame burning or torching; machine sanding or grinding without a HEPA exhaust; uncontained hydroblasting or high pressure wash; and dry scraping except around electrical outlets or except when treating defective paint spots no more than two square feet in any one interior room or space (hallway, pantry, etc.) or totalling no more than twenty square feet on exterior surfaces.

(iv) During exterior treatment soil and playground equipment must be protected from contamination.

(v) All treatment procedures must be concluded with a thorough cleaning of all surfaces in the room or area of treatment to remove fine dust particles. Cleanup must be accomplished by wet washing surfaces with a lead solubilizing detergent such as trisodium phosphate or an equivalent solution.

(vi) Waste and debris must be disposed of in accordance with all applicable Federal, state and local laws.

(7) *Tenant protection.* The owner must take appropriate action to protect residents and their belongings from hazards associated with treatment procedures. Residents must not enter spaces undergoing treatment until cleanup is completed. Personal belongings

that are in work areas must be relocated or otherwise protected from contamination.

(8) *Owner information responsibilities.* Prior to execution of the HAP contract, the owner must inform the PHA and the family of any knowledge of the presence of lead-based paint on the surfaces of the residential unit.

(9) *HA data collection and recordkeeping responsibilities.* (i) The HA must attempt to obtain annually from local health agencies the names and addresses of children with identified EBLs and must annually match this information with the names and addresses of participants under this part. If a match occurs, the HA must determine whether local health officials have tested the unit for lead-based paint. If the unit has lead-based paint the HA must require the owner to treat the lead-based paint. If the owner does not complete the corrective actions required by this section, the family must be issued a certificate or voucher to move.

(ii) The PHA must keep a copy of each inspection report for at least three years. If a dwelling unit requires testing, or if the dwelling unit requires treatment of chewable surfaces based on the testing, the HA must keep the test results indefinitely and, if applicable, the owner certification of treatment. The records must indicate which chewable surfaces in the dwelling units have been tested and which chewable surfaces in the units have been treated. If records establish that certain chewable surfaces were tested or treated and treated in accordance with the standards prescribed in this section, such chewable surfaces do not have to be tested or treated at any subsequent time.

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§ 982.402 Subsidy standards.

(a) *Purpose.* (1) The PHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions.

(2) For each family, the PHA determines the appropriate number of bedrooms under the PHA subsidy standards (family unit size).

(3) The family unit size number is entered on the voucher issued to the family. The PHA issues the family a voucher for the family unit size when a family is selected for participation in the program.

(b) *Determining family unit size.* The following requirements apply when the PHA determines family unit size under the PHA subsidy standards:

(1) The subsidy standards must provide for the smallest number of bed-

rooms needed to house a family without overcrowding.

(2) The subsidy standards must be consistent with space requirements under the housing quality standards (See § 982.401(d)).

(3) The subsidy standards must be applied consistently for all families of like size and composition.

(4) A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.

(5) A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.

(6) Any live-in aide (approved by the PHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;

(7) Unless a live-in aide resides with the family, the family unit size for any family consisting of a single person must be either a zero or one-bedroom unit, as determined under the PHA subsidy standards.

(8) In determining family unit size for a particular family, the PHA may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances. (For a single person other than a disabled or elderly person or remaining family member, such PHA exception may not override the limitation in paragraph (b)(7) of this section.)

(c) *Effect of family unit size-maximum subsidy in voucher program.* The family unit size as determined for a family under the PHA subsidy standard is used to determine the maximum rent subsidy for a family assisted in the voucher program. For a voucher tenancy, the PHA establishes payment standards by number of bedrooms. The payment standard for a family shall be the lower of:

(1) The payment standard amount for the family unit size; or

(2) The payment standard amount for the unit size of the unit rented by the family.

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(3) *Voucher program.* For a voucher tenancy, the PHA establishes payment standards by number of bedrooms. The payment standards for the family must be the lower of:

(i) The payment standards for the family unit size; or

(ii) The payment standard for the unit size rented by the family.

(d) *Size of unit occupied by family.* (1) The family may lease an otherwise acceptable dwelling unit with fewer bedrooms than the family unit size. However, the dwelling unit must meet the applicable HQS space requirements.

(2) The family may lease an otherwise acceptable dwelling unit with more bedrooms than the family unit size.

[60 FR 34695, July 3, 1995, as amended at 63 FR 23861, Apr. 30, 1998; 64 FR 26646, May 14, 1999]

§ 982.403 Terminating HAP contract when unit is too small.

(a) *Violation of HQS space standards.*

(1) If the PHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible.

(2) If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

(b) *Certificate program only—Subsidy too big for family size.* (1) Paragraph (b) of this section applies to the tenant-based certificate program.

(2) The PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible if:

(i) The family is residing in a dwelling unit with a larger number of bedrooms than appropriate for the family unit size under the PHA subsidy standards; and

(ii) The gross rent for the unit (sum of the contract rent plus any utility allowance for the unit size leased) exceeds the FMR/exception rent limit for the family unit size under the PHA subsidy standards.

(3) The PHA must notify the family that exceptions to the subsidy stand-

ards may be granted, and the circumstances in which the grant of an exception will be considered by the PHA.

(4) If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

(c) *Termination.* When the PHA terminates the HAP contract under paragraph (a) of this section:

(1) The PHA must notify the family and the owner of the termination; and

(2) The HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives such notice to the owner.

(3) The family may move to a new unit in accordance with § 982.314.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 26647, May 14, 1999]

§ 982.404 Maintenance: Owner and family responsibility; PHA remedies.

(a) *Owner obligation.* (1) The owner must maintain the unit in accordance with HQS.

(2) If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take prompt and vigorous action to enforce the owner obligations. PHA remedies for such breach of the HQS include termination, suspension or reduction of housing assistance payments and termination of the HAP contract.

(3) The PHA must not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any PHA-approved extension).

(4) The owner is not responsible for a breach of the HQS that is not caused by the owner, and for which the family is responsible (as provided in § 982.404(b) and § 982.551(c)). (However, the PHA may terminate assistance to a family

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because of HQS breach caused by the family.)

(b) *Family obligation.* (1) The family is responsible for a breach of the HQS that is caused by any of the following:

(i) The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the tenant;

(ii) The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the tenant; or

(iii) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).

(2) If an HQS breach caused by the family is life threatening, the family must correct the defect within no more than 24 hours. For other family-caused defects, the family must correct the defect within no more than 30 calendar days (or any PHA-approved extension).

(3) If the family has caused a breach of the HQS, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with § 982.552.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

§ 982.405 PHA initial and periodic unit inspection.

(a) The PHA must inspect the unit leased to a family prior to the initial term of the lease, at least annually during assisted occupancy, and at other times as needed, to determine if the unit meets the HQS. (See § 982.305(b)(2) concerning timing of initial inspection by the PHA.)

(b) The PHA must conduct supervisory quality control HQS inspections.

(c) In scheduling inspections, the PHA must consider complaints and any other information brought to the attention of the PHA.

(d) The PHA must notify the owner of defects shown by the inspection.

(e) The PHA may not charge the family or owner for initial inspection or re-inspection of the unit.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26647, May 14, 1999; 64 FR 56914, Oct. 21, 1999]

§ 982.406 Enforcement of HQS.

Part 982 does not create any right of the family, or any party other than PHA, HUD or the PHA, to require enforcement of the HQS requirements by HUD or the PHA, or to assert any claim against HUD or the PHA, for damages, injunction or other relief, for alleged failure to enforce the HQS.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

Subpart J—Housing Assistance Payments Contract and Owner Responsibility

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.451 Housing assistance payments contract.

(a)(1) The HAP contract must be in the form required by HUD.

(2) The term of the HAP contract is the same as the term of the lease.

(b)(1) The amount of the monthly housing assistance payment by the PHA to the owner is determined by the PHA in accordance with HUD regulations and other requirements. The amount of the housing assistance payment is subject to change during the HAP contract term.

(2) The monthly housing assistance payment by the PHA is credited toward the monthly rent to owner under the family's lease.

(3) The total of rent paid by the tenant plus the PHA housing assistance payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the PHA.

(4)(i) The part of the rent to owner which is paid by the tenant may not be more than:

(A) The rent to owner; minus

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(B) The PHA housing assistance payment to the owner.

(ii) The owner may not demand or accept any rent payment from the tenant in excess of this maximum, and must immediately return any excess rent payment to the tenant.

(iii) The family is not responsible for payment of the portion of rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA. See § 982.310(b).

(5)(i) The PHA must pay the housing assistance payment promptly when due to the owner in accordance with the HAP contract.

(ii)(A) The HAP contract shall provide for penalties against the PHA for late payment of housing assistance payments due to the owner if all the following circumstances apply:

(1) Such penalties are in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment of rent by a tenant;

(2) It is the owner's practice to charge such penalties for assisted and unassisted tenants; and

(3) The owner also charges such penalties against the tenant for late payment of family rent to owner.

(B) The PHA is not obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. The PHA may add HAP contract provisions which define when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

(iii) The PHA may only use the following sources to pay a late payment penalty from program receipts under the consolidated ACC: administrative fee income for the program; or the administrative fee reserve for the program. The PHA may not use other program receipts for this purpose.

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 63 FR 23861, Apr. 30, 1998; 64 FR 26647, May 14, 1999; 64 FR 56914, Oct. 21, 1999]

§ 982.452 Owner responsibilities.

(a) The owner is responsible for performing all of the owner's obligations under the HAP contract and the lease.

(b) The owner is responsible for:

(1) Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit.

(2) Maintaining the unit in accordance with HQS, including performance of ordinary and extraordinary maintenance. For provisions on family maintenance responsibilities, see § 982.404(a)(4).

(3) Complying with equal opportunity requirements.

(4) Preparing and furnishing to the PHA information required under the HAP contract.

(5) Collecting from the family:

(i) Any security deposit.

(ii) The tenant contribution

(the part of rent to owner not covered by the housing assistance payment).

(iii) Any charges for unit damage by the family.

(6) Enforcing tenant obligations under the lease.

(7) Paying for utilities and services (unless paid by the family under the lease).

(c) For provisions on modifications to a dwelling unit occupied or to be occupied by a disabled person, see 24 CFR 100.203.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23861, Apr. 30, 1998; 64 FR 26647, May 14, 1999]

§ 982.453 Owner breach of contract.

(a) Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:

(1) If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with the HQS.

(2) If the owner has violated any obligation under any other HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f).

(3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in drug-related criminal activity.

(6) If the owner has committed any violent criminal activity.

(b) The PHA rights and remedies against the owner under the HAP contract include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26647, May 14, 1999; 64 FR 56914, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000]

§ 982.454 Termination of HAP contract: Insufficient funding.

The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26647, May 14, 1999]

§ 982.455 Automatic termination of HAP contract.

The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.

[64 FR 26647, May 14, 1999]

§ 982.456 Third parties.

(a) Even if the family continues to occupy the unit, the PHA may exercise any rights and remedies against the owner under the HAP contract.

(b)(1) The family is not a party to or third party beneficiary of the HAP contract. Except as provided in paragraph (b)(2) of this section, the family may

not exercise any right or remedy against the owner under the HAP contract.

(2) The tenant may exercise any right or remedy against the owner under the lease between the tenant and the owner, including enforcement of the owner's obligations under the tenancy addendum (which is included both in the HAP contract between the PHA and the owner; and in the lease between the tenant and the owner.)

(c) The HAP contract shall not be construed as creating any right of the family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the PHA or the owner under the HAP contract.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26647, May 14, 1999]

Subpart K—Rent and Housing Assistance Payment

SOURCE: 63 FR 23861, Apr. 30, 1998, unless otherwise noted.

§ 982.501 Overview.

(a) This subpart describes program requirements concerning the housing assistance payment and rent to owner. These requirements apply to the Section 8 tenant-based program.

(b) There are two types of tenancies in the Section 8 tenant-based program:

(1) A tenancy under the voucher program.

(2) A tenancy under the certificate program (commenced before merger of the certificate and voucher programs on the merger date).

(c) Unless specifically stated, requirements of this part are the same for all tenancies. Sections 982.503, 982.504, and 982.505 only apply to a voucher tenancy. Sections 982.518, 982.519, 982.520, and 982.521 only apply to a tenancy under the certificate program.

[64 FR 26647, May 14, 1999]

§ 982.502 Conversion to voucher program.

(a) *New HAP contracts.* On and after the merger date, the PHA may only enter into a HAP contract for a tenancy under the voucher program, and

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may not enter into a new HAP contract for a tenancy under the certificate program.

(b) *Over-FMR tenancy.* If the PHA had entered into any HAP contract for an over-FMR tenancy under the certificate program prior to the merger date, on and after the merger date such tenancy shall be considered and treated as a tenancy under the voucher program, and shall be subject to the voucher program requirements under this part, including calculation of the voucher housing assistance payment in accordance with § 982.505. However, § 982.505(b)(2) shall not be applicable for calculation of the housing assistance payment prior to the effective date of the second regular reexamination of family income and composition on or after the merger date.

(c) *Voucher tenancy.* If the PHA had entered into any HAP contract for a voucher tenancy prior to the merger date, on and after the merger date such tenancy shall continue to be considered and treated as a tenancy under the voucher program, and shall be subject to the voucher program requirements under this part, including calculation of the voucher housing assistance payment in accordance with § 982.505. However, before the effective date of the second regular reexamination of family income and composition on or after the merger date, the payment standard for the family shall be the higher of:

(1) The initial payment standard for the family at the beginning of the HAP contract term; or

(2) The payment standard for the family as calculated in accordance with § 982.505, except that § 982.505(b)(2) shall not be applicable until the effective date of the second regular reexamination of family income and composition on or after the merger date.

(d) *Regular certificate tenancy.* The PHA must terminate program assistance under any outstanding HAP contract for a regular tenancy under the certificate program (entered prior to the merger date) at the effective date of the second regular reexamination of family income and composition on or after the merger date. Upon such termination of assistance, the HAP contract for such tenancy terminates automatically. The PHA must give at

least 120 days written notice of such termination to the family and the owner, and the PHA must offer the family the opportunity for continued tenant-based assistance under the voucher program. The PHA may deny the family the opportunity for continued assistance in accordance with §§ 982.552 and 982.553.

[64 FR 26648, May 14, 1999, as amended at 64 FR 56914, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000]

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

(a) *Payment standard schedule.* (1) HUD publishes the fair market rents for each market area in the United States (see part 888 of this title). The PHA must adopt a payment standard schedule that establishes voucher payment standard amounts for each FMR area in the PHA jurisdiction. For each FMR area, the PHA must establish payment standard amounts for each "unit size." Unit size is measured by number of bedrooms (zero-bedroom, one-bedroom, and so on).

(2) The payment standard amounts on the PHA schedule are used to calculate the monthly housing assistance payment for a family (§ 982.505).

(3) The PHA voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may establish a separate payment standard amount for each designated part of the FMR area.

(b) *Establishing payment standard amounts.* (1)(i) The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size. HUD approval is not required to establish a payment standard amount in that range ("basic range").

(ii) The PHA may establish a separate payment standard amount within the basic range for a designated part of an FMR area.

(2) The PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a

higher or lower payment standard amount. Paragraph (c) of this section describes the requirements for approval of a higher payment standard amount ("exception payment standard amount").

(c) *HUD approval of exception payment standard amount.* (1) *HUD discretion.* At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the fair market rent area (called an "exception area"). HUD may approve an exception payment standard amount in accordance with this paragraph (c) of this section for all units, or for all units of a given unit size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount.

(2) *Above 110 percent of FMR to 120 percent of FMR.* (i) The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR (upper range) if such office determines that such approval is justified by either the median rent method or the 40th percentile rent as described below (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

(A) *Median rent method.* In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(B) *40th percentile rent method.* In this method, HUD determines that the area exception rent equals the 40th percentile of rents to lease standard quality rental housing in the exception area. HUD determines the 40th percentile rent in accordance with the

methodology described in § 888.113 of this title for determining fair market rents. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(ii) The HUD Field Office may approve an exception payment standard amount within the upper range if required as a reasonable accommodation for a family that includes a person with disabilities.

(3) *Above 120 percent of FMR.* (i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:

(A) Such approval is necessary to prevent financial hardship for families;

(B) Such approval is supported by statistically representative rental housing survey data to justify HUD approval in accordance with the methodology described in § 888.113 of this title; and

(C) Such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section.

(ii) For purposes of paragraph (c)(3) of this section, the term "place" is an incorporated place or a U.S. Census designated place. An incorporated place is established by State law and includes cities, boroughs, towns, and villages. A U.S. Census designated place is the statistical counterpart of an incorporated place.

(4) *Program justification.* (i) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(2) or paragraph (c)(3) of this section) if HUD determines that approval of such higher amount is needed either:

(A) To help families find housing outside areas of high poverty, or

(B) Because voucher holders have trouble finding housing for lease under the program within the term of the voucher.

(ii) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(3) of this section) after six months from the date of HUD approval of an exception payment

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standard pursuant to paragraph (c)(2) of this section for the area.

(5) *Population.* The total population of HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

(6) *Withdrawal or modification.* At any time, HUD may withdraw or modify approval to use an exception payment standard amount.

(7) *Transition: Area exception rents approved prior to merger date.* Subject to paragraph (c)(6) of this section, the PHA may establish an exception payment standard amount up to the amount of a HUD-approved area exception rent in effect at the merger date.

(d) *HUD approval of payment standard amount below the basic range.* HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income. Such determination may be based on the most recent examinations of family income.

(e) *HUD review of PHA payment standard schedules.* (1) HUD will monitor rent burdens of families assisted in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income as the family share. Such determination may be based on the most recent examinations of family income.

(2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to

establish an increased payment standard amount within the basic range.

[64 FR 26648, May 14, 1999; 64 FR 49658, Sept. 14, 1999, as amended at 64 FR 56914, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000]

§ 982.504 Voucher tenancy: Payment standard for family in restructured subsidized multifamily project.

(a) This section applies to tenant-based assistance under the voucher program if all the following conditions are applicable:

(1) Such tenant-based voucher assistance is provided to a family pursuant to § 401.421 of this title when HUD has approved a restructuring plan, and the participating administrative entity has approved the use of tenant-based assistance to provide continued assistance for such families. Such tenant-based voucher assistance is provided for a family previously receiving project-based assistance in an eligible project (as defined in § 401.2 of this title) at the time when the project-based assistance terminates.

(2) The family chooses to remain in the restructured project with tenant-based assistance under the program and leases a unit that does not exceed the family unit size;

(3) The lease for such assisted tenancy commences during the first year after the project-based assistance terminates.

(b) The initial payment standard for the family under such initial lease is the sum of the reasonable rent to owner for the unit plus the utility allowance for tenant-paid utilities. (Determination of such initial payment standard for the family is not subject to paragraphs (c)(1) and (c)(2) of § 982.505. Except for determination of the initial payment standard as specifically provided in paragraph (b) of this section, the payment standard and housing assistance payment for the family during the HAP contract term shall be determined in accordance with § 982.505.)

[64 FR 26649, May 14, 1999]

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

(a) *Use of payment standard.* A payment standard is used to calculate the monthly housing assistance payment

for a family. The “payment standard” is the maximum monthly subsidy payment.

(b) *Amount of monthly housing assistance payment.* The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the lower of:

(1) The payment standard for the family minus the total tenant payment; or

(2) The gross rent minus the total tenant payment.

(c) *Payment standard for family.* (1) The payment standard for the family is the lower of:

(i) The payment standard amount for the family unit size; or

(ii) The payment standard amount for the size of the dwelling unit rented by the family.

(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with § 982.503 (including an exception payment standard amount as determined in accordance with § 982.503(b)(2) and § 982.503(c)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. The payment standard for the family shall be calculated in accordance with this paragraph and paragraph (c)(1) of this section.

(3) During the first 24 months of the HAP contract term, the payment standard for a family is the higher of:

(i) The initial payment standard (at the beginning of the HAP contract term), as determined in accordance with paragraphs (c)(1) and (c)(2) of this section, minus any amount by which the initial rent to owner exceeds the current rent to owner; or

(ii) The payment standard, as determined in accordance with paragraphs (c)(1) and (c)(2) of this section, as determined at the most recent regular reexamination of family income and composition effective after the beginning of the HAP contract term.

(4) After the first 24 months of the HAP contract term, the payment standard for a family is the payment standard for the family as determined in accordance with paragraphs (c)(1)

and (c)(2) of this section, as determined at the effective date of the most recent regular reexamination of family income and composition effective after the beginning of the HAP contract term.

(5) At the next regular reexamination following a change in family size or composition that causes a change in family unit size during the HAP contract term, and for any examination thereafter during the term:

(i) Paragraph (c)(3)(i) of this section does not apply; and

(ii) The new family unit size must be used to determine the payment standard.

(d) *PHA approval of higher payment standard for the family as a reasonable accommodation.* If the family includes a person with disabilities and requires a higher payment standard for the family, as a reasonable accommodation for such person, in accordance with part 8 of this title, the PHA may establish a higher payment standard for the family within the basic range.

[64 FR 26649, May 14, 1999, as amended at 64 FR 56914, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000]

§ 982.506 Negotiating rent to owner.

The owner and the family negotiate the rent to owner. At the family's request, the PHA must help the family negotiate the rent to owner.

[63 FR 23861, Apr. 30, 1998. Redesignated at 64 FR 26648, May 14, 1999]

§ 982.507 Rent to owner: Reasonable rent.

(a) *PHA determination.* (1) The PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

(2) The PHA must redetermine the reasonable rent:

(i) Before any increase in the rent to owner;

(ii) If there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary; or

(iii) If directed by HUD.

(3) The PHA may also redetermine the reasonable rent at any other time.

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(4) At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the PHA.

(b) *Comparability.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) *Owner certification of rents charged for other units.* By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

[63 FR 23861, Apr. 30, 1998. Redesignated at 64 FR 26648, May 14, 1999]

§ 982.508 Maximum family share at initial occupancy.

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the PHA issues a voucher to the family.

[64 FR 59622, Nov. 3, 1999]

§ 982.509 Rent to owner: Effect of rent control.

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law.

[63 FR 23861, Apr. 30, 1998. Redesignated and amended at 64 FR 26648, May 14, 1999]

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§ 982.510 Other fees and charges.

(a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.

(b) The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(c) The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

[63 FR 23861, Apr. 30, 1998. Redesignated at 64 FR 26648, May 14, 1999]

§ 982.514 Distribution of housing assistance payment.

The monthly housing assistance payment is distributed as follows:

(a) The PHA pays the owner the lesser of the housing assistance payment or the rent to owner.

(b) If the housing assistance payment exceeds the rent to owner, the PHA may pay the balance of the housing assistance payment ("utility reimbursement") either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 56914, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000]

§ 982.515 Family share: Family responsibility.

(a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(b) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.

(c) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to

owner. Payment of the whole family share is the responsibility of the family.

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 56915, Oct. 21, 1999]

§ 982.516 Family income and composition: Regular and interim examinations.

(a) *PHA responsibility for reexamination and verification.* (1) The PHA must conduct a reexamination of family income and composition at least annually.

(2) The PHA must obtain and document in the tenant file third party verification of the following factors, or must document in the tenant file why third party verification was not available:

- (i) Reported family annual income;
- (ii) The value of assets;
- (iii) Expenses related to deductions from annual income; and
- (iv) Other factors that affect the determination of adjusted income.

(b) *When PHA conducts interim reexamination.* (1) At any time, the PHA may conduct an interim reexamination of family income and composition.

(2) At any time, the family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must make the interim determination within a reasonable time after the family request.

(3) Interim examinations must be conducted in accordance with policies in the PHA administrative plan.

(c) *Family reporting of change.* The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(d) *Effective date of reexamination.* (1) The PHA must adopt policies prescribing how to determine the effective date of a change in the housing assistance payment resulting from an interim redetermination.

(2) At the effective date of a regular or interim reexamination, the PHA must make appropriate adjustments in the housing assistance payment. (For a voucher tenancy, the housing assistance payment shall be calculated in accordance with § 982.505. For a certificate tenancy, the housing assistance

payment shall be calculated in accordance with § 982.518.)

(e) *Family member income.* Family income must include income of all family members, including family members not related by blood or marriage. If any new family member is added, family income must include any income of the additional family member. The PHA must conduct a reexamination to determine such additional income, and must make appropriate adjustments in the housing assistance payment.

(f) *Accuracy of family income data.* The PHA must establish procedures that are appropriate and necessary to assure that income data provided by applicant or participant families is complete and accurate.

(g) *Execution of release and consent.* (1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a HUD-approved release and consent form (including any release and consent as required under § 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or HUD such information as the PHA or HUD determines to be necessary.

(2) The PHA and HUD must limit the use or disclosure of information obtained from a family or from another source pursuant to this release and consent to purposes directly in connection with administration of the program.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 13057, Mar. 16, 1999; 64 FR 26649, May 14, 1999; 64 FR 56915, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000]

EDITORIAL NOTE: At 64 FR 26649, May 14, 1999, § 982.516 was amended in paragraph (e) by removing the reference to "and family unit size"; however paragraph (e) does not contain this phrase.

§ 982.517 Utility allowance schedule.

(a) *Maintaining schedule.* (1) The PHA must maintain a utility allowance schedule for all tenant-paid utilities

(except telephone), for cost of tenant-supplied refrigerators and ranges, and for other tenant-paid housing services (e.g., trash collection (disposal of waste and refuse)).

(2) The PHA must give HUD a copy of the utility allowance schedule. At HUD's request, the PHA also must provide any information or procedures used in preparation of the schedule.

(b) *How allowances are determined.* (1) The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole and current utility rates.

(2)(i) a PHA's utility allowance schedule, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards. However, the PHA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

(ii) In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection (disposal of waste and refuse); other electric; refrigerator (cost of tenant-supplied refrigerator); range (cost of tenant-supplied range); and other specified housing services. The PHA must provide a utility allowance for tenant-paid air-conditioning costs if the majority of housing units in the market provide centrally air-conditioned units or there is appropriate wiring for tenant-installed air conditioners.

(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms), and unit types (e.g., apartment, row-house, town house, single-family detached, and manufactured housing) that are typical in the community.

(4) The utility allowance schedule must be prepared and submitted in accordance with HUD requirements on the form prescribed by HUD.

(c) *Revisions of utility allowance schedule.* (1) a PHA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there PHAs been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised. The PHA must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.

(2) At HUD's direction, the PHA must revise the utility allowance schedule to correct any errors, or as necessary to update the schedule.

(d) *Use of utility allowance schedule.* (1) The PHA must use the appropriate utility allowance for the size of dwelling unit actually leased by the family (rather than the family unit size as determined under the PHA subsidy standards).

(2) At reexamination, the PHA must use the PHA current utility allowance schedule.

(e) *Higher utility allowance as reasonable accommodation for a person with disabilities.* On request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

§982.518 Regular tenancy: How to calculate housing assistance payment.

The monthly housing assistance payment equals the gross rent, minus the higher of:

- (a) The total tenant payment; or
- (b) The minimum rent as required by law.

[63 FR 23861, Apr. 30, 1998. Redesignated at 64 FR 26648, May 14, 1999]

§ 982.519 Regular tenancy: Annual adjustment of rent to owner.

(a) *When rent is adjusted.* At each annual anniversary date of the HAP contract, the PHA must adjust the rent to owner at the request of the owner in accordance with this section.

(b) *Amount of annual adjustment.* (1) The adjusted rent to owner equals the lesser of:

(i) The pre-adjustment rent to owner multiplied by the applicable Section 8 annual adjustment factor, published by HUD in the FEDERAL REGISTER, that is in effect 60 days before the HAP contract anniversary;

(ii) The reasonable rent (as most recently determined or redetermined by the PHA in accordance with § 982.503); or

(iii) The amount requested by the owner.

(2) In making the annual adjustment, the pre-adjustment rent to owner does not include any previously approved special adjustments.

(3) The rent to owner may be adjusted up or down in accordance with this section.

(4) Notwithstanding paragraph (b)(1) of this section, the rent to owner for a unit must not be increased at the annual anniversary date unless:

(i) The owner requests the adjustment by giving notice to the PHA; and

(ii) During the year before the annual anniversary date, the owner has complied with all requirements of the HAP contract, including compliance with the HQS.

(5) The rent to owner will only be increased for housing assistance payments covering months commencing on the later of:

(i) The first day of the first month commencing on or after the contract anniversary date; or

(ii) At least sixty days after the PHA receives the owner's request.

(6) To receive an increase resulting from the annual adjustment for an annual anniversary date, the owner must request the increase at least sixty days before the next annual anniversary date.

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 13057, Mar. 16, 1999. Redesignated at 64 FR 26648, May 14, 1999]

§ 982.520 Regular tenancy: Special adjustment of rent to owner.

(a) *Substantial and general cost increases.* (1) At HUD's sole discretion, HUD may approve a special adjustment of the rent to owner to reflect increases in the actual and necessary costs of owning and maintaining the unit because of substantial and general increases in:

- (i) Real property taxes;
- (ii) Special governmental assessments;
- (iii) Utility rates; or
- (iv) Costs of utilities not covered by regulated rates.

(2) An PHA may make a special adjustment of the rent to owner only if the adjustment has been approved by HUD. The owner does not have any right to receive a special adjustment.

(b) *Reasonable rent.* The adjusted rent may not exceed the reasonable rent. The owner may not receive a special adjustment if the adjusted rent would exceed the reasonable rent.

(c) *Term of special adjustment.* (1) The PHA may withdraw or limit the term of any special adjustment.

(2) If a special adjustment is approved to cover temporary or one-time costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

[63 FR 23861, Apr. 30, 1998. Redesignated at 64 FR 26648, May 14, 1999]

§ 982.521 Rent to owner in subsidized project.

(a) *Applicability to subsidized project.* This section applies to a program tenancy in any of the following types of federally subsidized project:

(1) An insured or non-insured Section 236 project;

(2) A Section 202 project;

(3) A Section 221(d)(3) below market interest rate (BMIR) project; or

(4) A Section 515 project of the Rural Development Administration.

(b) *How rent to owner is determined.* The rent to owner is the subsidized rent as determined in accordance with requirements for the applicable federal program listed in paragraph (a) of this section. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see § 982.309).

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(c) *Certificate tenancy—Rent adjustment.* Rent to owner for a certificate tenancy is not subject to provisions governing annual adjustment (§ 982.519) or special adjustment (§ 982.520) of rent to owner.

[65 FR 16822, Mar. 30, 2000]

Subpart L—Family Obligations; Denial and Termination of Assistance

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§ 982.551 Obligations of participant.

(a) *Purpose.* This section states the obligations of a participant family under the program.

(b) *Supplying required information—*(1) The family must supply any information that the PHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). “Information” includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

(3) The family must disclose and verify social security numbers (as provided by part 5, subpart B, of this title) and must sign and submit consent forms for obtaining information in accordance with part 5, subpart B, of this title.

(4) Any information supplied by the family must be true and complete.

(c) *HQS breach caused by family.* The family is responsible for an HQS breach caused by the family as described in § 982.404(b).

(d) *Allowing PHA inspection.* The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice.

(e) *Violation of lease.* The family may not commit any serious or repeated violation of the lease.

(f) *Family notice of move or lease termination.* The family must notify the PHA and the owner before the family

moves out of the unit, or terminates the lease on notice to the owner. See § 982.314(d).

(g) *Owner eviction notice.* The family must promptly give the PHA a copy of any owner eviction notice.

(h) *Use and occupancy of unit.—*(1) The family must use the assisted unit for residence by the family. The unit must be the family’s only residence.

(2) The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).

(3) The family must promptly notify the PHA if any family member no longer resides in the unit.

(4) If the PHA has given approval, a foster child or a live-in-aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining when PHA consent may be given or denied.

(5) Members of the household may engage in legal profitmaking activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family.

(6) The family must not sublease or let the unit.

(7) The family must not assign the lease or transfer the unit.

(i) *Absence from unit.* The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit.

(j) *Interest in unit.* The family must not own or have any interest in the unit.

(k) *Fraud and other program violation.* The members of the family must not

commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

(l) *Crime by family members.* The members of the family may not engage in drug-related criminal activity, or violent criminal activity (see § 982.553).

(m) *Other housing assistance.* An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 11119, Mar. 18, 1996; 61 FR 13627, Mar. 27, 1996; 61 FR 27163, May 30, 1996; 64 FR 26650, May 14, 1999]

§ 982.552 PHA denial or termination of assistance for family.

(a) *Action or inaction by family.* (1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or § 982.553. The provisions of this section do not affect denial or termination of assistance for grounds other than action or failure to act by the family.

(2) Denial of assistance for an applicant may include any or all of the following: denying listing on the PHA waiting list, denying or withdrawing a voucher, refusing to enter into a HAP contract or approve a lease, and refusing to process or provide assistance under portability procedures.

(3) Termination of assistance for a participant may include any or all of the following: refusing to enter into a HAP contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures.

(4) This section does not limit or affect exercise of the PHA rights and remedies against the owner under the HAP contract, including termination, suspension or reduction of housing assistance payments, or termination of the HAP contract.

(b) *Requirement to deny admission or terminate assistance.*

(1) [Reserved]

(2) The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease.

(3) The PHA must deny admission to the program for an applicant, or terminate program assistance for a participant, if any member of the family fails to sign and submit consent forms for obtaining information in accordance with part 5, subparts B and F of this title.

(4) The family must submit required evidence of citizenship or eligible immigration status. See part 5 of this title for a statement of circumstances in which the PHA must deny admission or terminate program assistance because a family member does not establish citizenship or eligible immigration status, and the applicable informal hearing procedures.

(c) *Authority to deny admission or terminate assistance.* (1) *Grounds for denial or termination of assistance.* The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(i) If the family violates any family obligations under the program (see § 982.551). See § 982.553 concerning denial or termination of assistance for crime by family members.

(ii) If any member of the family has been evicted from federally assisted housing in the last five years;

(iii) If a PHA has ever terminated assistance under the program for any member of the family.

(iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program.

(v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(vi) If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

(vii) If the family breaches an agreement with the PHA to pay amounts

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owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

(viii) If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation.

(ix) If the family has engaged in or threatened abusive or violent behavior toward PHA personnel.

(x) If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

(2) *PHA discretion to consider circumstances.* In determining whether to deny admission or terminate assistance because of action or failure to act by members of the family:

(i) The PHA has discretion to consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

(iii) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

(d) *Information for family.* The PHA must give the family a written description of:

(1) Family obligations under the program.

(2) The grounds on which the PHA may deny or terminate assistance because of family action or failure to act.

(3) The PHA informal hearing procedures.

(e) *Applicant screening.* The PHA may at any time deny program assistance for an applicant in accordance with the PHA policy, as stated in the PHA administrative plan, on screening of applicants for family behavior or suitability for tenancy.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996; 63 FR 23865, Apr. 30, 1998; 64 FR 26650, May 14, 1999; 64 FR 49659, Sept. 14, 1999; 64 FR 56915, Oct. 21, 1999; 65 FR 16823, Mar. 30, 2000]

§ 982.553 Crime by family members.

(a) At any time, the PHA may deny assistance to an applicant, or terminate assistance to a participant family if any member of the family commits:

(1) Drug-related criminal activity; or

(2) Violent criminal activity.

(b) If the PHA seeks to deny or terminate assistance because of illegal use, or possession for personal use, of a controlled substance, such use or possession must have occurred within one year before the date that the PHA provides notice to the family of the PHA determination to deny or terminate assistance. The PHA may not deny or terminate assistance for such use or possession by a family member, if the family member can demonstrate that he or she:

(1) Has an addiction to a controlled substance, has a record of such an impairment, or is regarded as having such an impairment; and

(2) Is recovering, or has recovered from, such addiction and does not currently use or possess controlled substances. The PHA may require a family member who has engaged in the illegal use of drugs to submit evidence of participation in, or successful completion of, a treatment program as a condition to being allowed to reside in the unit.

(c) *Evidence of criminal activity.* In determining whether to deny or terminate assistance based on drug-related criminal activity or violent criminal activity, the PHA may deny or terminate assistance if the preponderance of

evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

§ 982.554 Informal review for applicant.

(a) *Notice to applicant.* The PHA must give an applicant for participation prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the PHA decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.

(b) *Informal review process.* The PHA must give an applicant an opportunity for an informal review of the PHA decision denying assistance to the applicant. The administrative plan must state the PHA procedures for conducting an informal review. The PHA review procedures must comply with the following:

(1) The review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(2) The applicant must be given an opportunity to present written or oral objections to the PHA decision.

(3) The PHA must notify the applicant of the PHA final decision after the informal review, including a brief statement of the reasons for the final decision.

(c) *When informal review is not required.* The PHA is not required to provide the applicant an opportunity for an informal review for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) A determination of the family unit size under the PHA subsidy standards.

(4) An PHA determination not to approve an extension or suspension of a voucher term.

(5) A PHA determination not to grant approval of the tenancy.

(6) An PHA determination that a unit selected by the applicant is not in compliance with HQS.

(7) An PHA determination that the unit is not in accordance with HQS because of the family size or composition.

(d) *Restrictions on assistance for non-citizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996; 64 FR 26650, May 14, 1999]

§ 982.555 Informal hearing for participant.

(a) *When hearing is required.*—(1) a PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:

(i) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.

(ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule.

(iii) A determination of the family unit size under the PHA subsidy standards.

(iv) A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the PHA subsidy standards, or the PHA determination to deny the family's request for an exception from the standards.

(v) A determination to terminate assistance for a participant family because of the family's action or failure to act (see § 982.552).

(vi) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance

payments for the family under an outstanding HAP contract.

(b) *When hearing is not required.* The PHA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) Establishment of the PHA schedule of utility allowances for families in the program.

(4) a PHA determination not to approve an extension or suspension of a voucher term.

(5) a PHA determination not to approve a unit or tenancy.

(6) a PHA determination that an assisted unit is not in compliance with HQS. (However, the PHA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in § 982.551(c).)

(7) a PHA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the PHA to exercise or not to exercise any right or remedy against the owner under a HAP contract.

(c) *Notice to family.* (1) In the cases described in paragraphs (a)(1) (i), (ii) and (iii) of this section, the PHA must notify the family that the family may ask for an explanation of the basis of the PHA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the family prompt written notice that the family may request a hearing. The notice must:

(i) Contain a brief statement of reasons for the decision,

(ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and

(iii) State the deadline for the family to request an informal hearing.

(d) *Expeditious hearing process.* Where a hearing for a participant family is required under this section, the PHA

must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

(e) *Hearing procedures—*(1) *Administrative plan.* The administrative plan must state the PHA procedures for conducting informal hearings for participants.

(2) *Discovery—*(i) *By family.* The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

(ii) *By PHA.* The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

(iii) *Documents.* The term "documents" includes records and regulations.

(3) *Representation of family.* At its own expense, the family may be represented by a lawyer or other representative.

(4) *Hearing officer: Appointment and authority.* (i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(5) *Evidence.* The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) *Issuance of decision.* The person who conducts the hearing must issue a written decision, stating briefly the

reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

(f) *Effect of decision.* The PHA is not bound by a hearing decision:

(1) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.

(g) *Restrictions on assistance to noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996; 64 FR 26650, May 14, 1999; 65 FR 16823, Mar. 30, 2000]

Subpart M—Special Housing Types

SOURCE: 63 FR 23865, Apr. 30, 1998, unless otherwise noted.

§ 982.601 Overview.

(a) *Special housing types.* This subpart describes program requirements for special housing types. The following are the special housing types:

- (1) Single room occupancy (SRO) housing;
- (2) Congregate housing;
- (3) Group home;
- (4) Shared housing;
- (5) Cooperative (including mutual housing);
- (6) Manufactured home.

(b) *PHA choice to offer special housing type.* (1) The PHA may permit a family to use any of the following special

housing types in accordance with requirements of the program: single room occupancy housing, congregate housing, group home, shared housing or cooperative housing.

(2) In general, the PHA is not required to permit use of any of these special housing types in its program.

(3) The PHA must permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

(4) For occupancy of a manufactured home, see § 982.620(a).

(c) *Family choice of housing and housing type.* The PHA may not set aside program funding for special housing types, or for a specific special housing type. The family chooses whether to rent housing that qualifies as a special housing type under this subpart, or as any specific special housing type, or to rent other eligible housing in accordance with requirements of the program. The PHA may not restrict the family's freedom to choose among available units in accordance with § 982.353.

(d) *Applicability of requirements.* Except as modified by this subpart, requirements in the other subparts of this part apply to the special housing types. Provisions in this subpart only apply to a specific special housing type. The housing type is noted in the title of each section.

SINGLE ROOM OCCUPANCY (SRO)

§ 982.602 SRO: Who may reside in an SRO?

A single person may reside in an SRO housing unit.

[64 FR 26650, May 14, 1999]

§ 982.603 SRO: Lease and HAP contract.

For SRO housing, there is a separate lease and HAP contract for each assisted person.

§ 982.604 SRO: Voucher housing assistance payment.

(a) For a person residing in SRO housing, the payment standard is 75 percent of the zero-bedroom payment standard amount on the PHA payment

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standard schedule. For a person residing in SRO housing in an exception area, the payment standard is 75 percent of the HUD-approved zero-bedroom exception payment standard amount.

(b) The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

[64 FR 26650, May 14, 1999]

§ 982.605 SRO: Housing quality standards.

(a) *HQS standards for SRO.* The HQS in § 982.401 apply to SRO housing. However, the standards in this section apply in place of § 982.401(b) (sanitary facilities), § 982.401(c) (food preparation and refuse disposal), and § 982.401(d) (space and security). Since the SRO units will not house children, the housing quality standards in § 982.401(j), concerning lead-based paint, do not apply to SRO housing.

(b) *Performance requirements.* (1) SRO housing is subject to the additional performance requirements in this paragraph (b).

(2) Sanitary facilities, and space and security characteristics must meet local code standards for SRO housing. In the absence of applicable local code standards for SRO housing, the following standards apply:

(i) *Sanitary facilities.* (A) At least one flush toilet that can be used in privacy, lavatory basin, and bathtub or shower, in proper operating condition, must be supplied for each six persons or fewer residing in the SRO housing.

(B) If SRO units are leased only to males, flush urinals may be substituted for not more than one-half the required number of flush toilets. However, there must be at least one flush toilet in the building.

(C) Every lavatory basin and bathtub or shower must be supplied at all times with an adequate quantity of hot and cold running water.

(D) All of these facilities must be in proper operating condition, and must be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approvable public or private disposal system.

(E) Sanitary facilities must be reasonably accessible from a common hall or passageway to all persons sharing them. These facilities may not be located more than one floor above or below the SRO unit. Sanitary facilities may not be located below grade unless the SRO units are located on that level.

(ii) *Space and security.* (A) No more than one person may reside in an SRO unit.

(B) An SRO unit must contain at least one hundred ten square feet of floor space.

(C) An SRO unit must contain at least four square feet of closet space for each resident (with an unobstructed height of at least five feet). If there is less closet space, space equal to the amount of the deficiency must be subtracted from the area of the habitable room space when determining the amount of floor space in the SRO unit. The SRO unit must contain at least one hundred ten square feet of remaining floor space after subtracting the amount of the deficiency in minimum closet space.

(D) Exterior doors and windows accessible from outside an SRO unit must be lockable.

(3) *Access.* (i) Access doors to an SRO unit must have locks for privacy in proper operating condition.

(ii) An SRO unit must have immediate access to two or more approved means of exit, appropriately marked, leading to safe and open space at ground level, and any means of exit required by State and local law.

(iii) The resident must be able to access an SRO unit without passing through any other unit.

(4) *Sprinkler system.* A sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as State or local law may require must be installed in each building. The term "major spaces" means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

CONGREGATE HOUSING

§ 982.606 Congregate housing: Who may reside in congregate housing.

(a) An elderly person or a person with disabilities may reside in a congregate housing unit.

(b)(1) If approved by the PHA, a family member or live-in aide may reside with the elderly person or person with disabilities.

(2) The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

§ 982.607 Congregate housing: Lease and HAP contract.

For congregate housing, there is a separate lease and HAP contract for each assisted family.

§ 982.608 Congregate housing: Voucher housing assistance payment.

(a) Unless there is a live-in aide:

(1) For a family residing in congregate housing, the payment standard is the zero-bedroom payment standard amount on the PHA payment standard schedule. For a family residing in congregate housing in an exception area, the payment standard is the HUD-approved zero-bedroom exception payment standard amount.

(2) However, if there are two or more rooms in the unit (not including kitchen or sanitary facilities), the payment standard for a family residing in congregate housing is the one-bedroom payment standard amount.

(b) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

[63 FR 23865, Apr. 30, 1998, as amended at 64 FR 26650, May 14, 1999]

§ 982.609 Congregate housing: Housing quality standards.

(a) *HQS standards for congregate housing.* The HQS in § 982.401 apply to congregate housing. However, the standards in this section apply in place of § 982.401(c) (food preparation and refuse disposal). Congregate housing is not subject to the HQS acceptability requirement in § 982.401(d)(2)(i) that the

dwelling unit must have a kitchen area.

(b) *Food preparation and refuse disposal: Additional performance requirements.* The following additional performance requirements apply to congregate housing:

(1) The unit must contain a refrigerator of appropriate size.

(2) There must be central kitchen and dining facilities on the premises. These facilities:

(i) Must be located within the premises, and accessible to the residents;

(ii) Must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;

(iii) Must be used to provide a food service that is provided for the residents, and that is not provided by the residents; and

(iv) Must be for the primary use of residents of the congregate units and be sufficient in size to accommodate the residents.

(3) There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

GROUP HOME

§ 982.610 Group home: Who may reside in a group home.

(a) An elderly person or a person with disabilities may reside in a State-approved group home.

(b)(1) If approved by the PHA, a live-in aide may reside with a person with disabilities.

(2) The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

(c) Except for a live-in aide, all residents of a group home, whether assisted or unassisted, must be elderly persons or persons with disabilities.

(d) Persons residing in a group home must not require continual medical or nursing care.

(e) Persons who are not assisted under the tenant-based program may reside in a group home.

(f) No more than 12 persons may reside in a group home. This limit covers

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all persons who reside in the unit, including assisted and unassisted residents and any live-in aide.

§ 982.611 Group home: Lease and HAP contract.

For assistance in a group home, there is a separate HAP contract and lease for each assisted person.

§ 982.612 Group home: State approval of group home.

A group home must be licensed, certified, or otherwise approved in writing by the State (e.g., Department of Human Resources, Mental Health, Retardation, or Social Services) as a group home for elderly persons or persons with disabilities.

§ 982.613 Group home: Rent and voucher housing assistance payment.

(a) *Meaning of pro-rata portion.* For a group home, the term “pro-rata portion” means the ratio derived by dividing the number of persons in the assisted household by the total number of residents (assisted and unassisted) residing in the group home. The number of persons in the assisted household equals one assisted person plus any PHA-approved live-in aide.

(b) *Rent to owner: Reasonable rent limit.* (1) The rent to owner for an assisted person may not exceed the pro-rata portion of the reasonable rent for the group home.

(2) The reasonable rent for a group home is determined in accordance with § 982.507. In determining reasonable rent for the group home, the PHA must consider whether sanitary facilities, and facilities for food preparation and service, are common facilities or private facilities.

(c) *Payment standard.* (1) *Family unit size.* (i) Unless there is a live-in aide, the family unit size is zero or one bedroom.

(ii) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

(2) The payment standard for a person who resides in a group home is the lower of:

(i) The payment standard amount on the PHA payment standard schedule for the family unit size; or (ii) The pro-

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rata portion of the payment standard amount on the PHA payment standard schedule for the group home size.

(iii) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

(d) *Utility allowance.* The utility allowance for each assisted person residing in a group home is the pro-rata portion of the utility allowance for the group home unit size.

[63 FR 23865, Apr. 30, 1998, as amended at 64 FR 26651, May 14, 1999]

§ 982.614 Group home: Housing quality standards.

(a) *Compliance with HQS.* The PHA may not give approval to reside in a group home unless the unit, including the portion of the unit available for use by the assisted person under the lease, meets the housing quality standards.

(b) *Applicable HQS standards.* (1) The HQS in § 982.401 apply to assistance in a group home. However, the standards in this section apply in place of § 982.401(b) (sanitary facilities), § 982.401(c) (food preparation and refuse disposal), § 982.401(d) (space and security), § 982.401(g) (structure and materials) and § 982.401(l) (site and neighborhood).

(2) The entire unit must comply with the HQS.

(c) *Additional performance requirements.* The following additional performance requirements apply to a group home:

(1) *Sanitary facilities.* (i) There must be a bathroom in the unit. The unit must contain, and an assisted resident must have ready access to:

(A) A flush toilet that can be used in privacy;

(B) A fixed basin with hot and cold running water; and

(C) A shower or bathtub with hot and cold running water.

(ii) All of these facilities must be in proper operating condition, and must be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approvable public or private disposal system.

(iii) The unit may contain private or common sanitary facilities. However, the facilities must be sufficient in number so that they need not be shared by more than four residents of the group home.

(iv) Sanitary facilities in the group home must be readily accessible to and usable by residents, including persons with disabilities.

(2) *Food preparation and service.* (i) The unit must contain a kitchen and a dining area. There must be adequate space to store, prepare, and serve foods in a sanitary manner.

(ii) Food preparation and service equipment must be in proper operating condition. The equipment must be adequate for the number of residents in the group home. The unit must contain the following equipment:

(A) A stove or range, and oven;

(B) A refrigerator; and

(C) A kitchen sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.

(iii) There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

(iv) The unit may contain private or common facilities for food preparation and service.

(3) *Space and security.* (i) The unit must provide adequate space and security for the assisted person.

(ii) The unit must contain a living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space. The unit must contain at least one bedroom of appropriate size for each two persons.

(iii) Doors and windows that are accessible from outside the unit must be lockable.

(4) *Structure and material.* (i) The unit must be structurally sound to avoid any threat to the health and safety of the residents, and to protect the residents from the environment.

(ii) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other significant damage. The roof structure must be firm, and the roof must be weathertight. The exterior or wall structure and exterior wall surface may not have any serious defects such as serious leaning, buckling, sagging, cracks or large holes,

loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., must not present a danger of tripping or falling. Elevators must be maintained in safe operating condition.

(iii) The group home must be accessible to and usable by a resident with disabilities.

(5) *Site and neighborhood.* The site and neighborhood must be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the residents. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or man-made, such as dangerous walks or steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mud slides, abnormal air pollution, smoke or dust, excessive noise, vibrations or vehicular traffic, excessive accumulations of trash, vermin or rodent infestation, or fire hazards. The unit must be located in a residential setting.

SHARED HOUSING

§ 982.615 Shared housing: Occupancy.

(a) *Sharing a unit.* An assisted family may reside in shared housing. In shared housing, an assisted family shares a unit with the other resident or residents of the unit. The unit may be a house or an apartment.

(b) *Who may share a dwelling unit with assisted family?* (1) If approved by the HA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

(2) Other persons who are assisted under the tenant-based program, or other persons who are not assisted under the tenant-based program, may reside in a shared housing unit.

(3) The owner of a shared housing unit may reside in the unit. A resident owner may enter into a HAP contract with the PHA. However, housing assistance may not be paid on behalf of an

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owner. An assisted person may not be related by blood or marriage to a resident owner.

§ 982.616 Shared housing: Lease and HAP contract.

For assistance in a shared housing unit, there is a separate HAP contract and lease for each assisted family.

§ 982.617 Shared housing: Rent and voucher housing assistance payment.

(a) *Meaning of pro-rata portion.* For shared housing, the term “pro-rata portion” means the ratio derived by dividing the number of bedrooms in the private space available for occupancy by a family by the total number of bedrooms in the unit. For example, for a family entitled to occupy three bedrooms in a five bedroom unit, the ratio would be 3/5.

(b) *Rent to owner: Reasonable rent.* (1) The rent to owner for the family may not exceed the pro-rata portion of the reasonable rent for the shared housing dwelling unit.

(2) The reasonable rent is determined in accordance with § 982.507.

(c) *Payment standard.* The payment standard for a family that resides in a shared housing is the lower of:

(1) The payment standard amount on the PHA payment standard schedule for the family unit size; or

(2) The pro-rata portion of the payment standard amount on the PHA payment standard schedule for the size of the shared housing unit.

(d) *Utility allowance.* The utility allowance for an assisted family residing in shared housing is the pro-rata portion of the utility allowance for the shared housing unit.

[63 FR 23865, Apr. 30, 1998, as amended by 64 FR 26651, May 14, 1999]

§ 982.618 Shared housing: Housing quality standards.

(a) *Compliance with HQS.* The PHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

(b) *Applicable HQS standards.* The HQS in § 982.401 apply to assistance in

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shared housing. However, the HQS standards in this section apply in place of § 982.401(d) (space and security).

(c) *Facilities available for family.* The facilities available for the use of an assisted family in shared housing under the family's lease must include (whether in the family's private space or in the common space) a living room, sanitary facilities in accordance with § 982.401(b), and food preparation and refuse disposal facilities in accordance with § 982.401(c).

(d) *Space and security: Performance requirements.* (1) The entire unit must provide adequate space and security for all its residents (whether assisted or unassisted).

(2)(i) Each unit must contain private space for each assisted family, plus common space for shared use by the residents of the unit. Common space must be appropriate for shared use by the residents.

(ii) The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family may not be less than the family unit size.

(iii) A zero or one bedroom unit may not be used for shared housing.

COOPERATIVE

§ 982.619 Cooperative housing.

(a) *When cooperative housing may be used.* A family may reside in cooperative housing if the PHA determines that:

(1) Assistance under the program will help maintain affordability of the cooperative unit for low-income families; and

(2) The cooperative has adopted requirements to maintain continued affordability for low-income families after transfer of a cooperative member's interest in a cooperative unit (such as a sale of the resident's share in a cooperative corporation).

(b) *Rent to owner.* (1) The reasonable rent for a cooperative unit is determined in accordance with § 982.507. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(2) The carrying charge consists of the amount assessed to the member by the cooperative for occupancy of the housing. The carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. However, the carrying charge does not include down-payments or other payments to purchase the cooperative unit, or to amortize a loan to the family for this purpose.

(3) Gross rent is the carrying charge plus any utility allowance.

(4) For a regular tenancy under the certificate program, rent to owner is adjusted in accordance with § 982.519 (annual adjustment) and § 982.520 (special adjustments). For a cooperative, adjustments are applied to the carrying charge as determined in accordance with this section.

(5) The occupancy agreement/lease and other appropriate documents must provide that the monthly carrying charge is subject to Section 8 limitations on rent to owner.

(c) *Housing assistance payment.* The amount of the housing assistance payment is determined in accordance with subpart K of this part.

(d) *Live-in aide.* (1) If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

(2) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

[63 FR 23865, Apr. 30, 1998, as amended by 64 FR 26651, May 14, 1999]

MANUFACTURED HOME

§ 982.620 **Manufactured home: Applicability of requirements.**

(a) *Assistance for resident of manufactured home.* (1) A family may reside in a manufactured home with assistance under the program.

(2) The PHA must permit a family to lease a manufactured home and space with assistance under the program.

(3) The PHA may provide assistance for a family that owns the manufactured home and leases only the space. The PHA is not required to provide such assistance under the program.

(b) *Applicability.* (1) The HQS in § 982.621 always apply when assistance is provided to a family occupying a manufactured home (under paragraph (a)(2) or (a)(3) of this section).

(2) Sections 982.622 to 982.624 only apply when assistance is provided to a manufactured home owner to lease a manufactured home space.

(c) *Live-in aide.* (1) If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

(2) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

§ 982.621 **Manufactured home: Housing quality standards.**

A manufactured home must meet all the HQS performance requirements and acceptability criteria in § 982.401. A manufactured home also must meet the following requirements:

(a) *Performance requirement.* A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage.

(b) *Acceptability criteria.* A manufactured home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

MANUFACTURED HOME SPACE RENTAL

§ 982.622 **Manufactured home space rental: Rent to owner.**

(a) *What is included.* (1) Rent to owner for rental of a manufactured home space includes payment for maintenance and services that the owner must provide to the tenant under the lease for the space.

(2) Rent to owner does not include the costs of utilities and trash collection for the manufactured home. However, the owner may charge the family a separate fee for the cost of utilities or trash collection provided by the owner.

(b) *Reasonable rent.* (1) During the assisted tenancy, the rent to owner for the manufactured home space may not exceed a reasonable rent as determined in accordance with this section. Section 982.503 is not applicable.

(2) The PHA may not approve a lease for a manufactured home space until the PHA determines that the initial rent to owner for the space is a reasonable rent. At least annually during the assisted tenancy, the PHA must redetermine that the current rent to owner is a reasonable rent.

(3) The PHA must determine whether the rent to owner for the manufactured home space is a reasonable rent in comparison to rent for other comparable manufactured home spaces. To make this determination, the PHA must consider the location and size of the space, and any services and maintenance to be provided by the owner in accordance with the lease (without a fee in addition to the rent).

(4) By accepting each monthly housing assistance payment from the PHA, the owner of the manufactured home space certifies that the rent to owner for the space is not more than rent charged by the owner for unassisted rental of comparable spaces in the same manufactured home park or elsewhere. The owner must give the PHA information, as requested by the PHA, on rents charged by the owner for other manufactured home spaces.

§ 982.623 Manufactured home space rental: Housing assistance payment.

(a) *Housing assistance payment: For certificate tenancy.* (1) During the term of a certificate tenancy (entered prior to the merger date), the amount of the monthly housing assistance payment equals the lesser of the amounts specified in paragraphs (b)(1)(i) or (b)(1)(ii) of this section:

(i) Manufactured home space cost minus the total tenant payment.

(ii) The rent to owner for the manufactured home space.

(2) “Manufactured home space cost” means the sum of:

- (i) The amortization cost,
- (ii) The utility allowance, and
- (iii) The rent to owner for the manufactured home space.

(3) *Amortization cost.* (i) The amortization cost may include debt service to amortize cost (other than furniture costs) included in the purchase price of the manufactured home. The debt service includes the payment for principal and interest on the loan. The debt service amount must be reduced by 15 percent to exclude debt service to amortize the cost of furniture, unless the PHA determines that furniture was not included in the purchase price.

(ii) The amount of the amortization cost is the debt service established at time of application to a lender for financing purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home is not included in amortization cost.

(iii) Debt service for set-up charges incurred by a family that relocates its home may be included in the monthly amortization payment made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize such charges.

(b) *Housing assistance payment for voucher tenancy.* (1) There is a separate fair market rent for a manufactured home space. The FMR for a manufactured home space is determined in accordance with § 888.113(e) of this title. The FMR for a manufactured home space is generally 40 percent of the published FMR for a two-bedroom unit.

(2) The payment standard shall be determined in accordance with § 982.505.

(3) The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the lower of:

(i) The payment standard minus the total tenant payment; or

(ii) The rent paid for rental of the real property on which the manufactured home owned by the family is located (“space rent”) minus the total tenant payment.

(4) The space rent is the sum of the following as determined by the PHA:

- (i) Rent to owner for the manufactured home space;
- (ii) Owner maintenance and management charges for the space;
- (iii) The utility allowance for tenant-paid utilities.

[64 FR 26651, May 14, 1999; 64 FR 49659, Sept. 14, 1999; 64 FR 56915, Oct. 21, 1999]

§ 982.624 Manufactured home space rental: Utility allowance schedule.

The PHA must establish utility allowances for manufactured home space rental. For the first twelve months of the initial lease term only, the allowances must include a reasonable amount for utility hook-up charges payable by the family if the family actually incurs the expenses because of a move. Allowances for utility hook-up charges do not apply to a family that leases a manufactured home space in place. Utility allowances for manufactured home space must not cover costs payable by a family to cover the digging of a well or installation of a septic system.

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